DISPOSITION AND DEVELOPMENT
AND OWNER PARTICIPATION AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT is made on or as of this _____ day of _____, 2004 by and between the Sunnyvale Redevelopment Agency (the "Agency"), a public body, corporate and politic, and Fourth Quarter Properties XLVIII, LLC (the "Developer"), a Georgia limited liability company, with reference to the following facts:

A. The overall purpose of this Agreement is to provide for redevelopment of the Center Property for new retail, residential and office uses through demolition of existing shopping center improvements and construction of new public and private improvements. "Center Property" and other capitalized terms used in these recitals have the meaning set forth in this Agreement.

B. Pursuant to its authority granted under California law, the Agency has the responsibility to carry out the Redevelopment Plan for the Downtown Sunnyvale Redevelopment Project, which was adopted by Ordinance No. 1796-75 of the City Council of the City of Sunnyvale on November 26, 1975. The redevelopment plan as described and as thereafter from time to time amended is referred to in this Agreement as the "Redevelopment Plan" and is incorporated into this Agreement by reference.

C. The Center Property is within the area governed by the Redevelopment Plan, and consists of several parcels owned by the Agency, City, SLLC, Macy's, Target, and Lehman. Attached as Exhibit A is a map showing the Center Property.

D. As it currently exists, the Agency Parcels in the Center Property are used for surface and structure parking. The SLLC Parcel in the Center Property is developed with an enclosed retail mall, surface and structure parking and an outparcel containing a restaurant building. The Macy's Parcel, Target Parcel and Harvest Parcel in the Center Property each are developed with large retail stores connected to the enclosed mall on the SLLC Parcel. The Macy's Parcel contains a currently operating Macy's store and the Target Parcel contains a currently operating Target store. The store on the Harvest Parcel is currently vacant. The WHL Parcel contains an office building.

E. The enclosed mall on the SLLC Parcel is currently vacant, and SLLC, the owner of the SLLC Parcel, has filed for bankruptcy. Developer has entered into a contract to purchase the SLLC Parcel from SLLC. Lehman has purchased the WHL Parcel and the Harvest Parcel and entered into an agreement to sell the WHL Parcel and the Harvest Parcel to Developer. Developer desires to redevelop the Center Property in cooperation with the Agency, the City, Macy's and Target.

F. The redevelopment of the Center Property, as contemplated by the Developer, involves demolition of the existing enclosed mall and other buildings and structures on the SLLC Parcel and the WHL Parcel, demolition of some of the existing parking structures on the Agency

Parcels, demolition of the store on the Harvest Parcel, and construction of new buildings for retail, office and residential use, new site improvements and new parking structures.

G. The Agency has determined that redevelopment of the Center Property in the manner contemplated by this Agreement will assist in the implementation of the Redevelopment Plan and the elimination of conditions of blight in the area governed by the Redevelopment Plan by providing for redevelopment of currently underutilized property for uses consistent with the Downtown Sunnyvale Specific Plan.

H. The purposes of this Agreement are to provide a mechanism for property transfers between the Agency and Developer and for Developer's construction of the Public Improvements and Private Improvements that constitute the Project in accordance with this Agreement and the Redevelopment Plan.

I. The Agency has determined that it is impractical from an architectural, engineering and construction standpoint to separately construct the Public Improvements because of their physical interrelationship with the Private Improvements to be constructed by the Developer, and that the construction of the Public Improvements pursuant to this Agreement would result in a lower public cost and greater benefit than if such Public Improvements were separately bid and constructed by the Agency.

J. The Agency has concluded that the Developer has the necessary capacity to carry out the commitments herein contained and that this Agreement is in the best interests and will materially contribute to the implementation of the Redevelopment Plan.

Section 1: DEFINITIONS AND EXHIBITS

1.01 Definitions.

The following capitalized terms shall, for purposes of this Agreement, have the meanings set forth in this Section 1.01.

(a) "Adjustments" is defined in Section 8.02 below.

(b) "Agency" means the Sunnyvale Redevelopment Agency, a public body, corporate and politic, formed and existing under the Community Redevelopment Law.

(c) "Agency Conveyance Parcels" means the parcels that the Agency will convey to the Developer at the Closing pursuant to this Agreement; the Agency Conveyance Parcels will be established as part of the approval of the New Parcel Map.

(d) "Agency Parcels" means Parcel 1, Parcel 2, Parcel 3 and Parcel 5 on the Current Subdivision Map.

(e) "Agreement" means this Disposition and Development and Owner Participation Agreement between the Agency and Developer, as the same may be amended.

(f) "Annual Payment" means the payment to be made to Developer pursuant to Section 8.01 of this Agreement.

(g) "Center Property" means all the property shown on the Current Subdivision Map plus the WHL Parcel and consists of the Agency Parcels, SLLC Parcel, the Harvest Parcel, the Macy's Parcel, the Target Parcel and the WHL Parcel.

(h) "Central Core Tax Increment" as used in Section 8.02 below is defined as the total Tax Increment the Agency receives from all the property included in the area governed by the Plan.

(i) "Certificate of Completion" is defined in Section 5.08 below.

(j) "City" means the City of Sunnyvale, a charter city.

(k) "City Approvals" means the City permits and approvals for the Project that Developer has obtained for the Project; the City Approvals are contained in Exhibit F to this Agreement.

(l) "Closing" means the close of escrow for the conveyance of the Agency Conveyance Parcels from the Agency to Developer, and for the conveyance of the Developer Conveyance Parcels from Developer to Agency.

(m) "Construction Plans" means the detailed plans, specifications, working drawings, elevations and other information on which Developer and its contractors and subcontractors will rely in constructing the Project.

(n) "Current Subdivision Map" means the subdivision map filed on May 25, 2000 in Book 728 of Maps at pages 6-9 in the Official Records of Santa Clara County, California, which map is attached to this Agreement as Exhibit B.

(o) "Developer" means Fourth Quarter Properties XLVIII, LLC, a Georgia limited liability company, and its successors and assigns as permitted under this Agreement including Lehman or Inland if there is a Transfer to Lehman or Inland as permitted pursuant to Section 6.03 below.

(p) "Developer Conveyance Parcels" means the parcels that Developer will convey to the Agency at the Closing pursuant to this Agreement; the Developer Conveyance Parcels will be established as part of the approval of the New Parcel Map.

(q) "Downtown Specific Plan" means the Downtown Sunnyvale Specific Plan adopted by the City and dated March 1993, as amended by the amendments adopted by the City on October 14, 2003 and July 13, 2004.

(r) "Escrow Holder" means _____ _____.

(s) "Existing REA" means the Construction, Operation, and Reciprocal Easement Agreement dated as of March 1, 1978 which is recorded in the Official Records of Santa Clara County as follows: original REA recorded on July 27, 1978 as Document No. 6089790; Amendment No. 1 recorded on September 5, 1980 as Document No. 6826488; Amendment No. 2 recorded on July 26, 1995 as Document No. 12962762; and Amendment No. 3 recorded on May 25, 2000 as Document No. 15261167; the Existing REA governs property relations in the Center Property and will be superseded by the New REA at the Closing.

(t) "First Class Facility" means a mixed use downtown project meeting the following criteria:

(i) initially developed with the Minimum Project;

(ii) containing at least 300,000 square feet of floor area for retail uses (excluding the retail stores on the Macy's Parcel and the Target Parcel);

(iii) no retail store shall exceed 100,000 square feet of floor area (other than the stores on the Macy's Parcel and the Target Parcel);

(iv) the total floor area square footage of all retail stores exceeding 28,000 square feet of floor area (other than the stores on the Macy's Parcel and the Target Parcel and any movie theater) does not exceed 200,000 square feet of floor area;

(v) no retail store advertises that all or substantially all of the goods it sells do not exceed a particular price;

(vi) no more than thirty-five percent (35%) of the retail space is rented to manufacturer's outlet stores;

(vii) the facilities in the Project are maintained in a first class manner comparable to other similar projects in the San Jose metropolitan area.

(u) "Gross Project Tax Increment" as used in Section 8.02 below is defined as the Tax Increment the Agency receives in a fiscal year which Tax Increment is generated from the amount by which the Secured Assessed Value of the Center Property exceeds the 2003-2004 Secured Assessed value, but in no event shall the Gross Project Tax Increment include any taxes that are not generated by development of the Center Property constructed pursuant to this Agreement as amended from time to time.

(v) "Harvest Parcel" means the parcel in the Center Property designated as the J.C. Penney's Parcel on the Current Subdivision Map; the Harvest Parcel is currently owned by Lehman.

(w) "Hazardous Materials" means any substances:

(i) defined as or included, or which becomes defined or included, in the definition of "hazardous substance," "hazardous waste," "hazardous material," "extremely hazardous waste," "designated waste," "restricted hazardous waste," or "toxic substance," or similar term under any local, state, or federal law or under the regulations adopted or promulgated pursuant thereto, including but not limited to, the Clean Air Act, 42 USC §§ 7401 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §§ 6901 et seq.; the Toxic Substance Control Act, 15 USC §§ 2601 et seq.; the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 USC §§ 135 et seq.; the Atomic Energy Act of 1954, 42 USC §§ 2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 USC §§ 10101 et seq.; the California Hazardous Waste Control Law, California Health & Safety Code §§ 25100 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §§ 13000 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §§ 25300 et seq. and their associated regulations; or

(ii) which is explosive, corrosive, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is regulated by any appropriate governmental authority as a hazardous material; or

(iii) which is or contains oil, gasoline, diesel fuel or other petroleum hydrocarbons; or

(iv) which is or contains polychlorinated biphenyls, asbestos, urea formaldehyde foam insulation, radioactive materials; or

(v) which is radon gas.

The term "Hazardous Materials" may include without limitation raw materials, building components, wastes, and the products of any manufacturing or other activities on the Center Property.

(x) "Initial Plans" means the initial elements of the Construction Plans to be prepared and submitted; the contents of the Initial Plans are described in Section 3.04 below.

(y) "Inland" means the Inland Group of Real Estate Companies, Inc ("IGREC") or any company owned, controlled or under common control with IGREC ("control" being defined for these purposes as ownership or the ability to vote or direct the vote of more than 50% of the ownership interest of such company or appointment or designation as the general partner, managing member, or equivalent without regard to ownership interest); Inland is providing financing to Developer for the acquisitions contemplated by Section 2.01 below and for construction of the Project.

(z) "Interim Mathilda Agreement" means the Interim Mathilda Agreement attached to this Agreement as Exhibit R and providing for Developer to operate, maintain and insure the surface parking on the Mathilda Structure Parcels prior to the Closing.

(aa) "Interim Project Tax Increment" is defined in Section 8.02 below.

(bb) "Lehman" means Lehman Ali Inc., a Delaware corporation ("LAI") or any parent company of LAI or company owned, controlled or under common control with LAI ("control" being defined for these purposes as ownership or the ability to vote or direct the vote of more than 50% of the ownership interest of such company or appointment or designation as the general partner, managing member, or equivalent without regard to ownership interest).

(cc) "Macy's" means Sun Town Center Properties Corporation; Macy's owns the Macy's Parcel.

(dd) "Macy's Conveyance Parcel" means the portion of the Macy's Parcel that will be conveyed to Developer; the Macy's Conveyance Parcel is a small portion of the Macy's parcel that currently has no building improvements on it.

(ee) "Macy's Parcel" means the parcel in the Center Property designated as the Macy's Parcel on the Current Subdivision Map.

(ff) "Mathilda Structures" means the parking structures located on Parcels 3 and 5, as shown on the Current Subdivision Map.

(gg) "Mathilda Structure Agreement" means the Agreement for Sublease, Operation and Maintenance of Parking Facilities dated March 1, 1978 between the City and SLCC's predecessors, as amended; said agreement pertains to Parcel 3 and Parcel 5 as described on the Current Subdivision Map and was recorded on July 27, 1978 in the Official Records of Santa Clara County at Book D842, page 315, amended by the Agreement Regarding Sublease recorded on April 1, 1998 in the Official Records of Santa Clara County as Document No. 14121325, and amended by the Second Amendment to Sublease recorded on May 25, 2000 in the Official Records of Santa Clara as Document No. 15261171.

(hh) "Mathilda Structure Parcels" means the parcels in the Center Property described as Parcel 3 and Parcel 5 on the Current Subdivision Map.

(ii) "Mello-Roos Bonds" means bonds issued by the City to be secured by and paid from special taxes levied on the non-residential portions of the Private Improvements Parcel.

(jj) "Minimum Project" means the portion of the Project that Developer is initially required to construct and develop pursuant to this Agreement; the portion of the Project constituting the Minimum Project is detailed in Section 3.01.

(kk) "New Parcel Map" means the new parcel map that Developer will prepare and obtain approvals for pursuant to Section 3.03 below.

(ll) "New Parcel Proposal" means the proposal for re-subdivision of the Center Property in a manner that is consistent with the City Approvals and designed to accomplish the Project; the New Parcel Proposal is shown on the map attached to this Agreement as Exhibit E.

(mm) "New REA" means the new Operation and Reciprocal Easement Agreement for the Center Property that will be developed pursuant to Section 2.05 below; the New REA will govern property relations in the Center Property following the Closing and will replace the Existing REA.

(nn) "Penney's Structure" means the parking structure located on Parcel 2, as shown on the Current Subdivision Map.

(oo) "Penney's Structure Agreement" means the Operation and Maintenance Agreement dated May 13, 2000 by and between SLLC and the City and pertaining to the operation and maintenance of the Penney's Structure as it may be amended or replaced pursuant to this Agreement.

(pp) "Penny's Structure Parcel" means Parcel 2, as shown on the Current Subdivision Map.

(qq) "Private Improvements" means the portions of the Project to be constructed on the Private Improvements Parcels; the Private Improvements include the retail, office and residential development and related parking and other improvements and are described in detail in Section 3.01 and Exhibit C and Exhibit D.

(rr) "Private Improvements Parcels" means those parcels to be owned by Developer as shown on the New Parcel Proposal, attached as Exhibit E to this Agreement; once the City has approved the New Parcel Map, the Private Improvement Parcels shall mean those to be owned by the Developer as shown on the New Parcel Map.

(ss) "Project" means the improvements Developer is to construct pursuant to this Agreement on the Private Improvements Parcel and the Public Improvements Parcel consisting of the Private Improvements and the Public Improvements; the Project is described in Section 3.01 below, and as may be modified pursuant to Section 3.02 below.

(tt) "Project Tax Increment" is defined in Section 8.02 below.

(uu) "Public Improvements" means the elements of the Project to be constructed on the Public Street Parcels and Public Parking Parcels consisting primarily of certain public parking structures, public streets, and public sidewalks adjacent to the streets bordering the exterior of the Center Property (i.e., Iowa, Sunnyvale, Mathilda, and Washington

Streets); the Public Improvements are described in detail in Section 3.01 and Exhibit C and Exhibit D.

(vv) "Public Improvements Parcels" means the Public Street Parcels and the Public Parking Parcels.

(ww) "Public Parking City Lease" means the lease pursuant to which the Agency will lease the Public Parking Parcels (other than the Penney's Structure Parcel) and improvements to the City for a term through 2024- 2025 year; the Public Parking City Lease is attached to this Agreement as Exhibit P.

(xx) "Public Parking Construction Lease" means the lease pursuant to which the Agency will lease the Public Parking Parcels (other than the Penney's Structure Parcel) to Developer during at least the period of construction of the Public Parking Structures on the Parking Parcels; the Public Parking Construction Lease is attached to this Agreement as Exhibit I.

(yy) "Public Parking Maintenance Agreement" means the Public Parking Maintenance Agreement attached to this Agreement as Exhibit Q pursuant to which the Developer will operate, maintain, insure, repair and replace the Public Parking Structures (other than the Penney's Structure) for a term of the shorter of ninety-nine (99) years or the term of the New REA.

(zz) "Public Parking Parcels" means those parcels to be owned by the Agency and on which the Public Parking Structures will be constructed, as shown on the New Parcel Proposal, attached as Exhibit E to this Agreement; once the City has approved the New Parcel Map, the Public Parking Parcels shall mean those to be owned by the Agency and on which the Public Parking Structures will be constructed, as shown on the New Parcel Map; the Public Parking Parcels will be developed with the Public Parking Structures in the Project.

(aaa) "Public Parking Purchase Price" means the purchase price for the City's purchase of Public Parking Structures, as determined pursuant to Section 8.07 below.

(bbb) "Public Parking Structures" means the Penney's Structure and the other public parking to be constructed pursuant to this Agreement.

(ccc) "Public Street Improvements" means the Public Improvements other than the Public Parking Structures; the Public Street Improvements consist primarily of the streets running through the Project and the sidewalks on the exterior of the Project.

(ddd) "Public Street Maintenance Agreement" means the Public Street Maintenance Agreement attached to this Agreement as Exhibit H pursuant to which the Developer will operate, maintain, insure, repair and replace the Public Street Improvements for a term of the shorter of ninety-nine (99) years or the term of the New REA.

(eee) "Public Street Parcels" means those parcels to be owned by the Agency on which the Public Street Improvements will be constructed as shown on the New Parcel Proposal, attached as Exhibit E to this Agreement; once the City has approved the New Parcel Map, the Public Street Parcels shall means those to be owned by the Agency for the Public Street Improvements as shown on the New Parcel Map.

(fff) "Redevelopment Plan" means the Redevelopment Plan for the Downtown Sunnyvale Redevelopment Project which was adopted by Ordinance No. 1796-75 of the City Council of the City on November 26, 1975.

(ggg) "Residential Developer" means Standard Pacific Homes, Inc who will undertake the development and construction of the residential units in the Project or any alternative developer or developers of the residential portion of the Project approved by the Agency Executive Director pursuant to Section 3.09; at the Closing the Residential Developer will acquire those portions of the Private Improvements Parcel on which the residential units will be constructed.

(hhh) "Restaurant Parcel" means the portion of the SLLC Parcel where the existing Chevy's restaurant is located.

(iii)"Secured Assessed Value" means, for a particular fiscal year, the assessed value of the Center Property on the Santa Clara County secured assessment roll plus the assessed value of all possessory interests in the Public Improvement Parcels on the Santa Clara County unsecured assessment roll, if the assessed value of the possessory interest is not on the secured roll.

(jjj) "SLLC" means Sunnyvale, LLC, a California limited liability company; SLLC owns the SLLC Parcel.

(kkk) "SLLC Parcel" means the parcel in the Center Property described as Parcel 4 on the Current Subdivision Map.

(lll) "Target" means Target Stores, Inc.; Target owns the Target Parcel.

(mmm)"Target Parcel" means the parcel in the Center Property designated as the Montgomery Ward Parcel on the Current Subdivision Map.

(nnn) "Target Tax Increment" is defined in Section 8.02 below.

(ooo) "Tax Increment" means the taxes paid to and received by the Agency pursuant to Health and Safety Code Section 33670.

(ppp) "Transfer" is defined in Section 6.01 below.

(qqq) "WHL Parcel" means the parcel described in the attached Exhibit O.

1.02 Exhibits.

The following exhibits are attached to and incorporated in this Agreement:

Exhibit A	Map Showing Center Property
Exhibit B	Current Subdivision Map
Exhibit C	Developer Project Proposal
Exhibit D	Map Showing Public Improvements and Private Improvements
Exhibit E	New Parcel Proposal
Exhibit F	City Approvals
Exhibit G	Grant Deed Form
Exhibit H	Public Street Maintenance Agreement
Exhibit I	Public Parking Construction Lease
Exhibit J	RESERVED
Exhibit K	Memorandum of Agreement
Exhibit L	Title Exceptions for Conveyances to Developer
Exhibit M	Title Exceptions for Conveyances to Agency
Exhibit N	Agency Property Reports
Exhibit O	Legal Description of WHL Parcel
Exhibit P	Public Parking City Lease
Exhibit Q	Public Parking Maintenance Agreement
Exhibit R	Interim Mathilda Agreement
Exhibit S	Fee and Charges Estimate
Exhibit T	Spreadsheet Showing Tax Increment Calculations

Section 2: INITIAL PROPERTY ACTIVITIES

2.01 Developer Acquisition of the Parcels.

(a) Developer has entered into a contract with SLLC to purchase the SLLC Parcel and has provided the Agency with a copy of the contract. Developer and Lehman shall use all reasonable efforts to obtain bankruptcy court approval for the purchase of the SLLC Parcel and acquire fee title to the SLLC Parcel by December 31, 2004. Developer shall provide to the Agency evidence of obtaining title promptly after having so obtained title.

(b) Lehman has purchased the WHL Parcel and the Harvest Parcel and has entered into a contract with Developer to sell those parcels to Developer. Developer shall complete the purchase and obtain fee title to the WHL Parcel and Harvest Parcel no later than December 31, 2004. Developer shall provide the Agency with evidence of obtaining title promptly after having so obtained title.

(c) Developer shall use all reasonable efforts to enter into a contract with Macy's to purchase the Macy's Conveyance Parcel. Developer shall complete the purchase and obtain fee title to the Macy's Conveyance Parcel no later than the date provided by that purchase

contract but in no event later than the date of the Closing. Developer shall provide the Agency with evidence of obtaining title promptly after having so obtained title.

(d) The Developer may request that the Agency Executive Director extend the deadlines set forth in subsections (a) and (b) for completing the purchase of and obtaining fee title to the SLLC Parcel, WHL Parcel or Harvest Parcel for up to an additional ninety (90) days. The Executive Director shall not withhold approval of such an extension if the extension is reasonably necessary to complete the purchase and obtain fee title to the parcel in question.

2.02 Assumption of Parking Structure Obligations.

Concurrent with obtaining title to the SLLC Parcel, Developer agrees to assume SLLC's obligations under the Penney's Structure Agreement. The Penney's Structure Agreement pertains to Parcel 2, as shown on the Current Subdivision Map, and the parking structures on that parcel. The Developer agrees that the Penney's Structure Agreement shall, prior to the Closing, also apply to Parcel 1 as shown on the Current Parcel Map which parcel contains surface parking. If the bankruptcy court overseeing SLLC's bankruptcy rejects the Penney's Structure Agreement, then concurrent with obtaining title to the SLLC Parcels, the Developer and Agency shall enter into a new agreement with terms identical to the Penney's Structure Agreement except such agreement shall also cover Parcel 1 (as shown on the Current Subdivision Map). Such new agreement shall then be deemed the Penney's Structure Agreement for purposes of this Agreement. Developer expects the bankruptcy court overseeing SLLC's bankruptcy to reject the Mathilda Structures Agreement. If the court so rejects that agreement, then concurrent with obtaining title to the SLLC Parcels, Developer and the Agency shall enter into the Interim Mathilda Agreement attached here as Exhibit R. If the court does not so reject the Mathilda Structures Agreement, then Developer shall assume the obligations of SLLC under that agreement concurrent with obtaining title to the SLLC Parcels.

2.03 Agreement With Residential Developer.

No later than March 31, 2005, Developer shall enter into a binding agreement with the Residential Developer providing for the Residential Developer to purchase the portion of the Private Improvement Parcel where the residential portion of the Project will be constructed, to assume the obligations of the Developer under this Agreement with respect to the residential portion of the Project, and to develop and construct the residential portion of the Project in accordance with this Agreement. The Developer may request that the Agency Executive Director extend the deadline set forth in this section for Developer to enter into a binding agreement with the Residential Developer for up to an additional ninety (90) days. The Executive Director shall not withhold approval of such an extension if the extension is reasonably necessary to allow completion and execution of the Developer's agreement with the Residential Developer.

2.04 Release from SLLC.

Prior to or concurrent with obtaining title to the SLLC Parcel, Developer shall provide to the Agency in a form reasonably acceptable to the Agency a release of all claims that SLLC may

have against the City, the Agency, or either of them, including, but not limited to those claims arising out of or in any way connected with the Mathilda Structures which are the subject of the Mathilda Structure Agreement, and those claims which SLLC may have against the City or the Agency arising out of, or related to the SLLC Parcel and/or the Project, provided, however, that the claims released may exclude those claims that SLLC may have with regard to property taxes (but excluding Mello-Roos special taxes) for or with respect to the Center Property.

2.05 Approval of REA.

Prior to the Closing, Developer shall use all reasonable efforts to obtain agreement from all relevant parties including the Agency, Residential Developer, Macy's and Target to terminate the Existing REA and replace it with the New REA at the Closing.

Section 3: DEVELOPER PREDEVELOPMENT ACTIVITIES

3.01 Description of the Proposed Project.

(a) The Developer desires to undertake the Project consisting of the demolition of the existing improvements on the Private Improvements Parcel and the Public Improvement Parcels (except for the Penney's Structure which will remain) and replacement of those improvements with a new mixed-use development consisting of:

(i) The Private Improvements which include:

- approximately 670,000 square feet of buildings for retail use, but excluding the existing buildings on the Macy's Parcel and Target Parcel.
- approximately 275,000 square feet of buildings for commercial office use.
- approximately 292 for sale residential units and required parking.
- private surface and structured parking for approximately 600 cars, of which approximately 520 spaces will be underground.
- other site improvements including landscaping, walkways, loading areas and driveways.

(ii) The Public Improvements which include:

- new public structured parking for approximately 4000 cars, of which approximately 920 will be underground. (The new

structured parking does not include the existing Penney's Structure which has approximately 900 spaces of which approximately 225 are below grade.)

- public streets and related improvements, including street parking for approximately 215 cars.

The Project is described and depicted in the Developer Project Proposal attached to this Agreement as Exhibit C and the City Approvals attached to this Agreement as Exhibit F. The map attached to this Agreement as Exhibit D shows the portion of the Project that Developer proposes will constitute the Private Improvements and the portion that will constitute the Public Improvements.

(b) The Developer may initially elect to undertake to develop and construct less than the entire Project. If Developer so elects, then Developer shall initially develop and construct the Minimum Project pursuant to this Agreement. The Minimum Project shall consist of at least 475,000 square feet of new buildings for retail use, 200 residential units, the exterior building shell for the office development that is located above retail buildings on Mathilda, parking and other infrastructure necessary for the buildings and uses in the Minimum Project (as dictated by the City Approvals), and the Public Improvements. The Minimum Project need not include any improvements on the Restaurant Parcel.

3.02 City Approvals.

Prior to execution of this Agreement, Developer applied to the City for a special development permit and other City permits and approvals necessary to construct the Project (other than demolition, building permits and the subdivision approvals referred to in Section 3.03). Such permits and approvals are referred to in this Agreement as the "City Approvals." At or prior to approval of this Agreement the City granted or approved the City Approvals which are described in the attached Exhibit F. Developer shall pay all fees and charges imposed by the City in connection with the City Approvals. The attached Exhibit S describes the current City fees and contains an estimate of the amount of the fees for the Project; however, the Agency does not warrant that the actual fees charged will be as set forth in that exhibit.

The Developer acknowledges and agrees that (i) the City Approvals and existing City land use regulations requires that twelve and a half percent (12.5%) of the housing built in the Project be affordable to persons whose income is at or below the moderate income level (ii) that the City Approvals and existing City land use regulations prohibit signs other than those identifying businesses in the Project; (iii) the City Approvals require that the Project have a high-quality design.

The Developer shall not seek any changes to the City Approvals so as to materially change the Project without the consent of the Agency which consent shall not be unreasonably withheld if the Project, as revised, is consistent with the Downtown Specific Plan and of equal quality and scope to the Project as initially proposed. If the City Approvals are issued subject to conditions requiring changes to the Project, the Agency consent to such changes shall be deemed

to have been given. If the Project is modified as a result of the foregoing, then, for purposes of this Agreement, the "Project" shall refer to the Project as so modified.

3.03 Overview of Real Estate Transactions, Subdivision Approval.

It is anticipated that at the Closing the Agency will convey portions of the Agency Parcels to Developer and Developer will convey portions of the SLLC Parcels and portions of the Harvest Parcel to the Agency. Following the Closing, it is anticipated that the real estate structure will be as follows:

- Macy's will own the Macy's Parcel (except the Macy's Conveyance Parcel) and Target will own the Target Parcel.

- Developer will own the Private Improvements Parcels and any improvements thereon.

- The Agency will own the Penney's Structure Parcel and the improvements thereon, and Developer will operate the improvements thereon pursuant to the Penney's Structure Agreement.

- The Agency will own the other Public Parking Parcels.

- The Agency will lease the other Public Parking Parcels to Developer pursuant to the Public Parking Construction Lease attached hereto as Exhibit I for the purpose of constructing the Public Parking Structures; this lease will terminate upon the City or Agency's purchase of those structures.

- Upon completion for the Public Parking Structures, the City or Agency will purchase those structures as outlined in Section 8.06 of this Agreement and, if the City purchases the structures, the City will then convey them to the Agency.

- The Agency will then lease the Public Parking Parcels to the City pursuant to the Public Parking City Lease attached hereto as Exhibit P and assign to Developer the Agency's right to receive lease payments under the lease with the City.

- The City, Agency, and Developer will enter into the Public Parking Maintenance Agreement attached hereto as Exhibit Q providing for the Developer to operate the Public Parking Structures and Public Parking Parcels (other than the Penney's Structure Parcel) and the structures thereon.

- The Public Parking Parcels will constitute all the parcels where Public Parking Structures are constructed. Private parking for residential uses will be on parcels that are part of the Private Improvements Parcels but physically part of and connected to a public parking structure on a Public Parking Parcel.

- The Public Street Parcels and the Public Street Improvements will be owned by the Agency; the Developer will construct the Public Street Improvements and operate them pursuant to the Public Street Maintenance Agreement attached hereto as Exhibit H.

Promptly following obtaining fee title to the SLLC Parcel, WHL Parcel, and Harvest Parcel, Developer shall prepare and submit to the City for approval a subdivision or parcel map creating the Public Improvement Parcels and the Private Improvement Parcels (the "New Parcel Map"). The New Parcel Map shall be in conformance with the New Parcel Proposal attached to this Agreement as Exhibit E and shall not materially deviate therefrom without the prior written approval of the Agency. Developer shall diligently pursue and obtain the City approval for the New Parcel Map. The New Parcel Map will, as set forth below, be recorded at the Closing. Following the City approval of the New Parcel Map, the Private Improvement Parcels shall refer to those parcels to be owned by Developer as shown on the approved New Parcel Map and the Public Improvement Parcels shall refer to those parcels to be owned by the Agency including the Public Parking Parcels and Public Street Parcels as shown on the approved New Parcel Map.

In conjunction with preparation of the New Parcel Map, the Developer shall also prepare legal descriptions of the portions of the Agency Parcels that will become the Agency Conveyance Parcels and the portions of the SLLC Parcel, WHL Parcel, and Harvest Parcel that will become the Developer Conveyance Parcels. Those conveyances are those necessary to create the Public Improvement Parcels including Public Parking Parcels and the Public Street Parcels to be owned by the Agency and the Private Improvement Parcels to be owned by the Developer. The legal descriptions shall be consistent with the approved New Parcel Map and may be by reference to the parcels on that map.

3.04 Construction Plans.

(a) The Developer shall prepare Construction Plans for the construction of the Project. The Construction Plans shall be consistent with the City Approvals, the approved New Parcel Map and, in the case of the Public Improvements, in conformance with the City's standards for such improvements.

(b) The Developer shall prepare and submit the Construction Plans to the City pursuant to Section 3.05 below in phases. The initial submission shall include, at a minimum, complete plans for demolition, grading, utility installations and foundations of buildings (the "Initial Plans"). The Initial Plans shall be completed and submitted to the City pursuant to Section 3.05 by July 1, 2005. The Construction Plans remaining to be prepared after the Initial Plans shall be completed and submitted to the City pursuant to Section 3.05 by September 1, 2005.

(c) Developer may undertake the work for which it has prepared the Initial Plans prior to the Closing. If Developer desires to undertake that work, prior to undertaking the work, it shall obtain all permits and approvals required by the City or other governmental entities to undertake the work, and comply with Section 3.08 with regard to the work being undertaken. The Developer shall also prepare and obtain Agency approval of and implement a construction

mitigation program containing the elements specified in Section 5.13 below to the extent relevant to the work that the Developer is undertaking. Provided Developer obtains the required permits and approvals and the Agency approval of the construction mitigation program, then, notwithstanding any other provision of this Agreement, Developer shall be permitted to undertake the work described in the Initial Plans prior to the Closing.

(d) The Developer may request that the Agency Executive Director extend for up to an additional ninety (90) days the deadlines set forth in subsection (b) and Section 3.05 for completion and submission to the City of the Initial Plans and for completion and submission to the City of the remaining Construction Plans. The Executive Director shall not withhold approval of such an extension if the extension is reasonably necessary to complete the Initial Plans or the Remaining Construction Plans as the case may be.

3.05 Building Permits.

Upon submission of the Initial Plans to the City and upon submission of the remaining Construction Plans to the City, the Developer shall diligently pursue and obtain the building permits for construction of the Project. The applications for building permits shall be consistent with and incorporate the Initial Plans and the Construction Plans and shall be consistent with the City Approvals, the approved New Parcel Map and, in the case of the Public Improvements, in conformance with the City's standards for such improvements.

3.06 Other Permits and Approvals.

At the time Developer applies to the City for building permits, Developer shall also apply for, diligently pursue and obtain any other City or other governmental or utility permits or approvals necessary to construct the Project including but not limited to demolition permits and encroachment permits.

3.07 Evidence of Financing.

At the time Developer applies to the City for building and construction permits, it shall also submit to the Agency evidence reasonably satisfactory to the Agency that Developer has obtained firm commitments of equity and loan funds to construct, complete and operate the Project in accordance with this Agreement. The evidence shall be for the entire Project even though Developer may have completed the Initial Plans and commenced construction of the improvements shown in the Initial Plans. Such evidence shall include the following:

(i) Copies of the agreement or other documents committing the lender and/or equity funds for construction and, if required to obtain construction financing, permanent financing; equity funding shall constitute at least twenty percent (20%) of the Project costs, provided, however, no equity funding shall be required if the construction loan and completion of the construction will be guaranteed by Stanley E. Thomas, the president of the managing member of Developer, and the debt owing, if any, to Lehman is subordinate to the construction loan.

(ii) Financial information concerning lenders and equity investors (if any are required) showing the ability of the lenders and/or equity investors to provide the committed funds.

(iii) Project cash flows showing the estimated costs of constructing and developing the Project in accordance with this Agreement, when those costs will be paid and when committed loan and equity funds (if any are required) will be available.

(iv) Evidence of leases or lease commitments sufficient to assure the availability of the identified loan and equity funds (if any are required) in accordance with the Project cash flows.

The Agency shall review the evidence of financing and approve or disapprove it in writing within fifteen (15) days following receipt. The Agency shall approve the evidence of financing if it indicates that Developer will have sufficient funds to construct the Project and pay for the Project costs when due. If the Agency disapproves, it shall set forth in detail the reasons for disapproval and Developer shall then have sixty (60) days to submit revised evidence of financing. The Agency shall approve or disapprove the revised evidence of financing within fifteen (15) days following receipt.

Developer and the Agency shall cooperate to retain financial information submitted by Developer as confidential to the extent permitted by law.

3.08 Evidence of Construction Contract.

At the time the Developer obtains building permits for the Project, it shall submit to the Agency an executed contract or contracts with reputable contractors for construction of the Project at a cost consistent with the Project cash flows approved by the Agency pursuant to Section 3.07 above. The construction contracts shall contain the provisions required pursuant to Section 5.05 and Section 5.06 below. Agency review shall be limited to determining if the contract has the provisions required by Section 5.05 and 5.06 below and that the contract amount is consistent with the Project cash flows.

At the time Developer obtains building permits for the Project, Developer shall deliver to the Agency payment and performance bonds for the full amount of the cost of construction of the Public Improvements. Such bonds may be provided through Developer's contractors and/or subcontractors. Such bonds shall be from a reputable bonding company or companies licensed to do business in California and shall name the Agency as co-obligee.

3.09 Assumption of Obligations by Residential Developer.

Prior to the Closing, the Agency, Developer and the Residential Developer shall enter into an assumption agreement whereby the Residential Developer assumes the obligation to construct the residential portions of the Project in accordance with the terms and conditions of this Agreement. Such assumption agreement shall not relieve the Developer of any obligations under this Agreement. If, prior to the Closing, Developer desires to change the Residential

Developer, the Developer shall submit to the Agency Executive Director the qualifications of the proposed substitute Residential Developer or Residential Developers for approval. The Executive Director shall not unreasonably withhold approval of the substitute Residential Developer or Residential Developers if the proposed substitutes have the necessary financial capacity and development experience to undertake and complete the development of the residential portion of the Project in accordance with this Agreement. Developer shall be entitled to separate written notice from the Agency of any default of Residential Developer, and opportunity to cure such default of the Residential Developer, on the same basis as provided in this Agreement with respect to defaults of Developer. In no event shall Developer be in default under this Agreement during any period during which Developer is diligently prosecuting any cure of any default of Residential Developer**.**

3.10 Submissions for Less Than Entire Project.

Developer may elect to initially construct less than the Entire Project but in no event less than the Minimum Project. If Developer elects to initially construct less than the entire Project, Developer shall submit to the Agency in writing notice of that election and a detailed description of the portions of the Project it will initially construct which in any event shall not be less than the Minimum Project. Said notice and description shall be submitted to the Agency no later than at least thirty (30) days prior to the date the Developer is required to apply for a building permit pursuant to Section 3.05 above.

If Developer elects to initially construct less than the entire Project, then the submissions pursuant to Section 3.04 through Section 3.08 of Construction Plans, applications for building permits, applications for other permits or approvals, evidence of financing, and evidence of construction contracts need only pertain to the portion of the Project that Developer has elected to initially construct.

If the Developer does not initially construct the entire Project, then prior to later constructing any other portion of the Project, the Developer shall satisfy the conditions set forth in Section 3.04 through Section 3.06 above prior to commencing construction of that portion of the Project. Nothing in this Agreement is intended to prevent Developer from later constructing improvements on the Private Improvement Parcel, provided Developer first obtains all City and other governmental approvals and any approvals required under the New REA, or other agreement.

If the portion of the Project Developer initially undertakes does not include construction of new improvements on the Restaurant Parcel, then Developer shall not be required to initially demolish the existing improvements on that parcel. Instead, those improvements shall be demolished when the portion of the Project on the Restaurant Parcel is to be constructed.

3.11 Leasing Plan and Local Businesses.

(a) Prior to Closing, Developer shall prepare a leasing plan for leasing of the retail space in the Project and submit the plan to the Agency Executive Director for review and comment. The leasing plan shall consider existing businesses throughout downtown as if the

entire downtown were included in the leasing plan. Specifically, the leasing plan shall provide for limiting the square footage of restaurant space in the Project to 70,000 square feet as shown in the City Approvals.

(b) Developer acknowledges that leasing some of the retail space in the Project to independently owned local businesses will help to create a character for the Project which is unique to Sunnyvale. To that end, the Agency will provide to Developer a list of local merchants who have established a loyal clientele due to the quality of their merchandise and service and may wish to expand their businesses. Developer shall make good faith efforts to attract such merchants to lease space and to open operations in the Project. Developer shall, upon inquiry by such merchants, make similar offers to merchants already located downtown. Developer shall include provisions for local independently owned businesses in the leasing plan submitted to the Agency for review. Developer may seek assistance of agencies such as the Small Business Development Center in selecting and supporting small businesses to be located in the Project.

Section 4: PROPERTY TRANSACTIONS

4.01 Sale and Purchase, Lease.

Subject to the terms and conditions of this Agreement, the Agency shall convey the Agency Conveyance Parcels to Developer and Developer shall accept conveyance of the Agency Conveyance Parcels from the Agency, the Developer shall convey the Developer Conveyance Parcels to the Agency and the Agency shall accept conveyance of the Developer Conveyance Parcels from the Developer.

4.02 Opening Escrow.

To accomplish the conveyances contemplated by this Agreement, the parties shall promptly after the execution of this Agreement establish an escrow with the Escrow Holder. On or before the Closing, the parties shall execute and deliver to Escrow Holder written instructions consistent with this Agreement to consummate the transactions at the Closing.

4.03 Conveyance Consideration.

The Agency shall convey the Agency Conveyance Parcels to the Developer in consideration for Developer's performance of its obligations under this Agreement. The Developer shall convey the Developer Conveyance Parcels to the Agency in consideration for the Agency's performance of its obligations under this Agreement.

4.04 Closing Date.

The Closing shall occur within ten (10) days following the date on which Developer and Agency have satisfied all the conditions set forth in Section 2 and Section 3 above and Section 4.11 and Section 4.12 below, but in no event later than December 1, 2005. The Developer may

request that the Agency Executive Director extend for up to an additional ninety (90) days the deadlines for Closing set forth in this section. The Executive Director shall not withhold approval of such an extension if the extension is reasonably necessary to accomplish the Closing. If any litigation challenging this Agreement or the Project is pending at the time otherwise set for the Closing, then the Agency and Developer may mutually agree to postpone the deadline for the Closing until the litigation is resolved.

4.05 Conveyances.

The Agency shall convey the Agency Conveyance Parcels to Developer by grant deed which shall be in the form set forth in Exhibit G (Grant Deed Form).

The Developer shall convey the Developer Conveyance Parcels to the Agency by grant deed in a form reasonably acceptable to the Agency and Developer.

4.06 Other Closing Documents.

(a) At the Closing, the Agency and Developer shall enter into the Public Parking Construction Lease attached as Exhibit I.

(b) At the Closing, the Agency and Developer shall enter into and record the Public Streets Maintenance Agreement attached as Exhibit H.

(c) At the time of Closing, the Agency and Developer shall take the steps necessary to terminate the Existing REA and record the New REA so as to make it effective against all the parcels in the Center Property.

(d) At the Closing the Agency and Developer shall execute and record the Memorandum of Agreement, attached to this Agreement as Exhibit K.

4.07 Possession.

The Agency shall deliver possession of the Agency Conveyance Parcels and Public Parking Parcels (other than the Penney's Structure Parcel) to Developer at the Closing. The Developer shall deliver possession of the Developer Conveyance Parcels to the Agency at the Closing. At the Closing the Agency shall also grant to Developer a right of entry onto the Public Street Parcels so as to allow Developer to construct the portion of the Public Improvements to be built on those parcels.

4.08 Condition of Title.

(a) The Agency Conveyance Parcels shall be conveyed to Developer and the Public Parking Parcels shall be leased to Developer free and clear of all liens, encumbrances, clouds, conditions, and rights of occupancy, except:

(i) The effect of the Redevelopment Plan.

(ii) The New REA.

(iii) Existing public and private utility easements.

(iv) The exceptions noted in the attached Exhibit L (Title Exceptions for Conveyances to Developer).

(v) Any other exception accepted by Developer in writing.

(b) The Developer Conveyance Parcels shall be conveyed to the Agency free and clear of all liens, encumbrances, clouds, conditions, and rights of occupancy, except:

(i) The effect of the Redevelopment Plan.

(ii) The New REA.

(iii) The exceptions shown in the attached Exhibit M (Title Exceptions for Conveyances to Agency).

(iv) Any other exceptions accepted by the Agency in writing.

4.09 Condition of Property.

Developer acknowledges and agrees that it will acquire the Agency Conveyance Parcels and occupy and possess the Public Improvement Parcels including the Developer Conveyance Parcels in an "as is" condition and that Developer (except as provided in Section 5.07 providing for the Agency to contribute to certain demolition costs) shall be solely responsible for and shall bear all the costs of demolition, construction, reconstruction, rehabilitation, site preparation, correction of any soils, subsurface or structural conditions on those (including, but not limited to removal, disposal, remediation, monitoring or mitigation of any Hazardous Materials) and for otherwise putting all parcels including the Agency Conveyance Parcels, Public Improvement Parcels, and the Private Improvement Parcels, in a condition suitable for use construction and development in accordance with this Agreement. Developer shall be solely responsible for and shall bear all the costs of removal, remediation, monitoring or mitigation of any Hazardous Materials on the Developer Conveyance Parcels. The Developer acknowledges that the Agency has provided to Developer the reports regarding the Agency Conveyance Parcels and the Public Improvement Parcels listed in Exhibit N (Agency Property Reports) to this Agreement and provided Developer the opportunity to inspect and test the Agency Conveyance Parcels and the Public Improvements Parcels (to the extent owned by the Agency and not the Developer or others prior to the Closing). The Agency is making no representation or warranty of any sort concerning the conditions of the Agency Conveyance Parcels or the Public Improvement Parcels.

Notwithstanding the foregoing, the Agency shall be responsible for paying the reasonable costs of removal, disposal, remediation, monitoring or mitigation of Hazardous Materials on the Agency Conveyance Parcels discovered in the course of construction of the Private

Improvements to the extent such Hazardous Materials were on the Agency Conveyance Parcels at the time of the Closing.

4.10 Costs of Escrow and Closing.

Developer shall, unless paid by others, pay all property taxes including possessory interest taxes but excluding special taxes referred to below whether charged before or after the date of the Closing. The special taxes on the Developer Conveyance Parcels shall be removed from those parcels and transferred to the Private Improvement Parcels. Developer shall bear the cost of title insurance for the conveyances and shall pay any transfer tax on the conveyance of the Agency Conveyance Parcels to Developer or other transfers at the Closing. The Agency shall bear the cost of title company document preparation and recordation fees. All other costs of escrow (including the fee of escrow holder), if any, shall be evenly borne by the parties.

4.11 Agency Conditions Precedent.

(a) The obligations of the Agency under this Agreement to convey the Agency Conveyance Parcels to Developer and accept conveyance of the Developer Conveyance Parcels from Developer at the Closing are subject to satisfaction of all relevant conditions set forth in this Section 4.11. The Agency may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. After the Closing, any such condition that has not been satisfied shall be treated as having been waived in writing. No such waiver shall constitute a waiver by the Agency of any of its rights or remedies if Developer defaults in the performance of any covenant or agreement to be performed by Developer under this Agreement or if Developer breaches any representation or warranty made by Developer in this Agreement.

(b) The conditions set forth in this subsection (b) shall be applicable to the Closing under this Agreement.

(i) At the Closing, Developer shall not be in default in the performance of any covenant or agreement to be performed by Developer under this Agreement.

(ii) At the Closing, all representations and warranties made by Developer in this Agreement shall be true and correct as if made on and as of the Closing.

(iii) Developer has obtained the building permits and any other permits or approvals necessary to construct the Project that are required to be obtained prior to the Closing pursuant to Section 3.04, Section 3.05 and Section 3.06 above.

(iv) The Agency has approved the Developer's evidence of financing pursuant to Section 3.07 above and that financing will be available at and following the Closing to construct the Project in accordance with this Agreement.

(v) The Agency has approved the construction contracts and construction bonds for the Project pursuant to Section 3.08 above.

(vi) The Residential Developer and the Agency have entered into the assumption agreement contemplated by Section 3.09 above.

(vii) The actions to be taken pursuant to Sections 2.01 through 2.05 have been completed in compliance with this Agreement.

(viii) Title to the Developer Conveyance Parcels is in the condition specified in Section 4.08.

4.12 Developer Conditions Precedent.

(a) The obligations of Developer under this Agreement to convey the Developer Conveyance Parcels to the Agency and to accept conveyance of the Agency Conveyance Parcels from the Agency at the Closing are subject to satisfaction of all of the relevant conditions set forth in this Section 4.12. Developer may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. After the Closing, any such condition that has not been satisfied shall be treated as having been waived in writing. No such waiver shall constitute a waiver by Developer of any of its rights or remedies if the Agency defaults in the performance of any covenant or agreement to be performed by the Agency or if the Agency breaches any representation or warranty made by the Agency in this Agreement.

(b) The conditions set forth in this subsection (b) shall be applicable to the Closing under this Agreement.

(i) At the Closing, the Agency shall not be in default in the performance of any covenant or agreement to be performed by the Agency under this Agreement.

(ii) At the Closing, all representations and warranties made by the Agency in this Agreement shall be true and correct as if made on and as of the Closing.

(iii) Title to the Agency Conveyance Parcels and Public Parking Parcels is in the condition specified in Section 4.08.

(iv) To the extent required, the bankruptcy court considering the SLLC bankruptcy has approved the transactions contemplated by this Agreement and that approval is not subject to further appeal.

Section 5: CONSTRUCTION OF IMPROVEMENTS

5.01 Commencement of Construction.

Developer, for itself, its successors and assigns, hereby covenants and agrees to commence construction of the Project immediately following the date of the Closing.

5.02 Completion of the Improvements.

The Developer, for itself, its successors and assigns, hereby covenants and agrees to complete the construction of the Project within twenty-four (24) months following the Closing, provided however that Developer will complete a substantial portion of the retail portion of the Project so as to permit opening of a substantial portion of the retail portion of the Project by September 30, 2007.

5.03 Construction in Accordance with Plans.

Developer shall construct the Project substantially in accordance with the Construction Plans approved by the City in the course of the approval of the building and construction permits for the Project.

5.04 Change In Plans.

If Developer desires to make a substantial change in the approved Construction Plans, Developer shall submit the proposed change to the City for any necessary permits, approvals or modifications of previously issued permits or approvals. No such change shall be implemented unless approved by the City in accordance with applicable City standards and codes.

5.05 Fair Employment Opportunity.

The Developer and its contractor(s) and their successors, assigns and subcontractors shall not discriminate against any employee or applicant for employment in connection with the construction of the Project because of race, color, creed, religion, sex, marital status, national origin, gender, disability, sexual orientation or ancestry. Each of the following activities shall be conducted in a non-discriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rate of pay and other forms of compensation; and selection for training including apprenticeship. Moreover, the Developer shall, using all reasonable efforts, require the contractor(s) and the subcontractors to give preference, to the extent practicable, for employment to those individuals residing within the geographical area governed by the Redevelopment Plan as provided by relevant State law.

5.06 Prevailing Wages; Compliance With Laws.

The Developer shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations and comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations. For the purposed of this Section 5.06, construction of the Project shall include demolition (whether undertaken before or after the Closing) and any predevelopment testing, surveying or other activities that constitute "construction" under Labor Code Section 1720 et. seq. The Developer shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq.

Copies of the currently applicable current per diem prevailing wages are available from the City of Sunnyvale Public Works Department, 465 Olive Street, Sunnyvale, California. During the construction of the Project, Developer shall or shall cause the contractor to post at the Center Property the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Agency) the Agency and the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq. and implementing regulation or comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of the Project or any other work undertaken on or in connection with the Property. Developer shall require all contractors and subcontractors utilized in the construction of the Project to substantially comply with all applicable federal and state labor laws and regulations relating to the construction of the Project, including but not limited to 8 United States Code Section 1324a (Unlawful Employment of Aliens) and regulations implementing said Code section and laws concerning child labor.

5.07 Agency Payment for Mathilda Structures Demolition.

As part of the Project, Developer will demolish the Mathilda Structures and the adjoining parking structure on the SLLC Parcels. Pursuant to its obligations under this Agreement, the Agency will contribute $800,000 towards the cost of demolishing those structures. Payment shall be made in installments on a progress payment basis. Developer shall submit periodic draw requests accompanied by detailed bills and invoices showing costs incurred and the percentage of the work completed. Within ten (10) days of receipt of each draw request, the Agency shall pay to Developer two-thirds (2/3) of the amounts expended for the demolition as reasonably determined by the Agency based on the draw request and any other information available to the Agency. However, in no event shall the total of Agency payments exceed $800,000.

5.08 Certificate of Completion.

Promptly after completion of the construction of the Project in accordance with those provisions of this Agreement relating solely to the obligations of Developer to carry out the construction of the Project, the Agency will provide an instrument so certifying (the "Certificate of Completion"). The Certificate of Completion will not be issued until the Agency has certified completion of the Public Improvements pursuant to Section 5.11 below. The Certificate of Completion shall be conclusive determination that the covenants in this Agreement with respect to the obligations of Developer, its successors and assigns, to carry out the construction of the Project have been met. The Certificate of Completion shall be in such form as will enable it to be recorded among the official records of Santa Clara County. Such certification and determination shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust and shall not be deemed a notice of completion under the California Civil Code.

If, pursuant to Section 3.10, the Developer elects not to initially construct the entire Project, the Developer shall be entitled to a Certificate of Completion pursuant to this Section

5.08 upon completion of that part of the Project that Developer is initially required to develop and construct.

Nothing in this section shall preclude the Developer from obtaining certificates of occupancy from the City for completed buildings or structures in the Project and occupying such buildings or structures even though the Agency has not yet issued a Certificate of Completion pursuant to this section.

5.09 Lien Free Construction.

During construction of the Project, Developer shall take such steps as are necessary to keep the Public Improvement Parcels free of liens or other encumbrances created in connection with Developer's possession of the Public Improvement Parcels and construction of the Public Improvements. If a lien or other encumbrance nevertheless attaches to the Public Improvement Parcels, the Agency may require Developer to take such steps as the Agency determines are reasonably necessary to protect against such lien or encumbrance including, without limitation, requiring Developer to provide the Agency with a bond, letter of credit or other form of security, including bonding over with the Escrow Holder, in an amount equal to one hundred ten percent (110%) of the amount of the lien or encumbrance. The Agency shall not require such steps until the earlier of one hundred twenty (120) days following the date the lien or encumbrance attaches or the date any litigation to enforce the lien or encumbrance is filed.

5.10 Ownership and Transfer of Public Improvements.

During construction of the Public Improvements, said improvements shall be owned by Developer and Developer shall be solely responsible for any taxes or charges arising from the ownership, existence or construction of the Public Improvements or from Developer's possession or occupancy of the Public Improvements Parcel during construction of the Public Improvements. Upon completion of the Public Street Improvements and Agency certification of completion of the Public Street Improvements in accordance with Section 5.11 below, the Developer shall transfer ownership of these improvements to the Agency by deed, bill of sale or other conveyance upon which the parties reasonably agree. The Public Parking Structures on the Public Parking Parcels may be purchased by the City pursuant to Section 8.06 below.

5.11 Inspections and Certification of Completion of Public Improvements.

During the course of construction of the Public Improvements, the Developer shall permit Agency and City representatives to have access to the Public Improvements Parcel for the purpose of inspecting the construction of the Public Improvements. If, as a result of those inspections, the City determines that the Public Improvements are not being constructed in accordance with the approved Construction Plans, the Agency or City shall notify Developer who shall correct, at Developer's sole cost, the work to make it conform to the Construction Plans. When the Public Improvements are completed, the City shall make a final inspection and the City or Agency shall notify Developer within twenty (20) days following completion of the inspection of any items that have not been completed or have not been constructed in accordance with the approved Construction Plans. Developer shall thereafter using all reasonable diligence

complete and correct the work at Developer's sole cost. If there is any dispute between the Agency, the City and Developer regarding completion of the Public Improvements or whether the Public Improvements have been constructed in accordance with the approved Construction Plans, the Agency and Developer shall make good faith efforts to resolve the dispute. If the dispute is not resolved within thirty (30) days, the dispute shall be submitted to arbitration for resolution. The arbitration shall be conducted by an arbitrator mutually agreeable to the Agency and Developer (or if the Agency and Developer cannot agree on an arbitrator within sixty (60) days, an arbitrator shall be selected through the arbitrator selection process of the American Arbitration Association) (the "Arbitrator") for resolution pursuant to the rules adopted by the Arbitrator relating to commercial construction and in accordance with the criteria set forth in this Section 5.11. The decision of the arbitrator shall be final and binding on the Agency, the City and Developer. Compliance with City building and construction codes shall not be subject to arbitration.

5.12 Relocation Expenses.

If any person or entity is required to move from the Center Property as a result of the Developer's acquisition of a parcel, the Agency shall provide relocation benefits to such person or entity in accordance with law. Promptly following a request by the Agency, Developer shall reimburse the Agency for relocation costs as well as for reasonable costs incurred by the Agency for any consultants employed to assist with the relocation. The Agency's request for reimbursement shall include the bills and invoices showing in detail the costs for which reimbursement is sought.

5.13 Support of Existing Downtown Business During Construction.

(a) Prior to commencement of construction of the Project, Developer shall prepare, and submit to the Agency for approval and thereafter implement, a construction mitigation program designed to minimize the disruption to surrounding businesses during construction. In preparing the program, Developer shall consult with downtown Sunnyvale merchants. Such program shall contain, at a minimum, the following:

(i) Plan of travel routes for construction trucks to and from the site

(ii) Location for sufficient construction worker parking, if off-site, shuttle service thereto if it is not within easy walking distance

(iii) An enforcement mechanism to insure that construction workers and suppliers do not park in public parking facilities intended for customer parking

(iv) Measures to mitigate the impacts upon operating businesses due to temporary loss of required parking during demolition and construction.

(v) Signs indicating to the public that Macy's, Target and downtown stores are open for business during construction, and signs directing customers to available public parking facilities.

(b) During the planning and construction of the Project and while construction is underway until the entire Project is completed, Developer shall hold meetings with businesses and property owners in downtown as frequently as reasonably necessary (but no less frequent than monthly) to learn of any impacts on them during the prior month and to alert them to construction plans for the coming month. In addition, a website shall be maintained by Developer with a link from the City website to provide accurate and timely information on construction schedules and any potential disruptions to utilities, traffic and parking. Developer shall notify affected merchants, property owners and residents at least two weeks in advance of any planned utility disruption.

(c) During the planning and construction of the Project and until the entire Project is completed, Developer shall designate a coordinator who will be available 24 hours a day, seven days a week, to respond to problems of noise, security, utility disruption, parking violations and traffic problems.

(d) During the demolition and construction of the Project, Developer and its contractors and subcontractors performing work on the Project shall hold regular meetings with a representative or representatives designated by the Agency so as to facilitate the work of the contractors and subcontractors and resolve any ongoing construction issues affecting Downtown merchants and residents.

(e) The Developer shall also comply with the conditions of the City Approvals relating to management of construction.

Section 6: CHANGES IN DEVELOPER

6.01 Prohibition on Transfers.

For the purposes of this Agreement, a "Transfer" means any voluntary or involuntary sale, transfer, conveyance, assignment or other disposition of fee title to the whole or any part of the Private Improvement Parcels or any assignment of this Agreement, the New REA, Penney's Structure Agreement, the Public Parking Maintenance Agreement, the Public Streets Maintenance Agreement or the Public Parking Construction Lease; a Transfer also includes any voluntary or involuntary sale, transfer, conveyance, assignment or other disposition of the ownership interests in Developer. Except as permitted pursuant to Section 6.03, prior to issuance of a Certificate of Completion, the Developer shall not engage in a Transfer without the prior written approval of the Agency, which approval may be granted or withheld in the Agency's sole discretion. Following issuance of a Certificate of Completion, the Developer may engage in a Transfer provided the Agency approves the Transfer pursuant to Section 6.04 or Section 6.05. In no event shall the Developer engage in a Transfer which will result in the person or entity with the obligations under the Public Parking Construction Lease or Public Parking Maintenance Agreement not being the owner of all or a substantial portion of the Private Improvements Parcel.

6.02 Effectuation of Transfers.

A transfer approved by the Agency pursuant to Section 6.02, Section 6.04 or Section 6.05 or permitted pursuant to Section 6.03 shall be accomplished pursuant to documentation providing for the transferee to undertake and assume the relevant rights and obligations under this Agreement. Unless agreed to otherwise by the Agency, a Transfer shall not relieve Developer of its obligations under this Agreement. Promptly following any Transfer, Developer shall provide to the Agency any information reasonably necessary to determine the Ownership Percentage under Section 8.02 below.

6.03 Certain Permitted Transfers.

Notwithstanding the provisions of Section 6.01, the Developer, without the approval of the Agency pursuant to Section 6.01, may engage in the following Transfers:

(i) A lease of space in the Private Improvements for occupancy upon completion.

(ii) A security interest or mortgage in the Private Improvements Parcel and/or the Public Parking Construction Lease in connection with the financing approved by the Agency pursuant to Section 3.07 or a security interest or mortgage created after the issuance of a Certificate of Completion.

(iii) A Transfer to a Residential Developer pursuant to an assumption agreement pursuant to Section 3.09.

(iv) A Transfer to Lehman or to Inland, provided that Lehman or Inland, as the case may be, shall not go forward with development of the Project until the Agency Executive Director has approved the development team which approval shall not be unreasonably withheld if the members of the development team have the financial capacity and experience to complete the development of the Project and operate the Project as a First Class Facility. For the purposes of this subsection (iv), a Transfer to Lehman shall be deemed to have occurred if Fourth Quarter Properties XLVII, LLC ("Fourth Quarter") shall cease to exist or shall not for any reason be the Developer under this Agreement or if Lehman acquires the SLLC Parcel or Fourth Quarter. Within thirty (30) days following a Transfer to Lehman or Inland pursuant to this subsection (iv), Lehman or Inland shall submit to the Agency the names and qualifications of the members of the development team. Times for performance under this Agreement shall be suspended for the thirty (30) period following the Transfer to Lehman or Inland and the subsequent period of time until the Agency has approved or rejected the new development team pursuant to this subsection (iv).

Lehman or Inland may request that the Agency Executive Director extend the period of suspension pursuant to this subsection (iv) for times of performance for up to an additional sixty (60) days. The Executive Director shall not withhold approval of such an extension if the extension is reasonably necessary for Lehman or Inland to assemble the development team.

(v) Notwithstanding the provisions of Section 6.01, prior to issuance of a Certificate of Completion, Developer or Lehman may engage in a Transfer to a designee of Lehman if the transferee is approved by the Agency pursuant to the following procedure:

Lehman shall submit to the Agency Executive Director and Agency Treasurer a written list of potential transferees together with detailed information regarding the proposed transferees' qualifications to complete the development of the Project as a First Class Facility and operate the Project as a First Class Facility. Within thirty (30) days following receipt of the list, and accompanying information, the Agency Executive Director shall either approve or disapprove each proposed transferee on the list which approval shall not be unreasonably withheld if a transferee has the financial capacity and experience to complete the development of the Project and operate the Project as a First Class Facility. The Agency Executive Director approval of a proposed transferee pursuant to this subsection (v) shall expire one year following the date of Agency approval of the list of proposed transferees, unless extended by the Agency Executive Director. Expiration of an approval of a proposed transferee shall not preclude obtaining subsequent approval for the same or other proposed transferees in accordance with the procedure set forth in this subsection.

(vi) Any Transfer occurring following the end of the period that Developer receives Annual Payments pursuant to Section 8.01.

(vii) Any Transfer of less than a fifty percent (50%) interest in Developer occurring after issuance of a Certificate of Completion.

6.04 Transfer After Issuance of Certificate of Completion

(a) If, after issuance of the Certificate of Completion and prior to the end of the period in which Annual Payments are made pursuant to Section 8.01, the Developer proposes to sell all or a substantial portion of the Project, the Developer shall submit in writing a detailed description of the proposed transaction together with detailed information concerning the financial and operational qualifications of the proposed purchaser. Within thirty (30) days following receipt of all of the information required pursuant to the previous sentence, the Agency

Executive Director may approve or disapprove in writing the proposed transaction. Failure to approve or disapprove in the thirty (30) day period shall be deemed approval.

(b) If the Agency Executive Director approves the proposed transaction, Developer may complete the sale on the terms set forth in the submittal to the Agency. If there is no sale following the Agency approval, any future sale transaction shall again be submitted to the Agency in accordance with the procedure set forth in subsection (a) above.

(c) Except as provide in subsection (f) below, if the Agency disapproves the proposed sale transaction, the Agency shall purchase the Project or portion thereof on the same terms and conditions as were set forth in the proposal Developer submitted to the Agency. The purchase price shall be paid and title to the Project or portion thereof conveyed to the Agency within forty-five (45) days following the date of the Agency disapproval notice or such longer period as would have been allowed for the proposed purchaser.

(d) Except as provided in subsection (f), the Agency's purchase of the Project or portion thereof pursuant to subsection (c) of this section shall be its only recourse in the event the Agency Executive Director disapproves the proposed sale. If, after disapproval of a proposed sale, the Agency does not complete the purchase of the Project or portion thereof then Developer shall not be required to submit any subsequent sale of the Project or portion thereof to the Agency for approval pursuant to subsection (a) of this section.

(e) This section shall not apply to any sale of any portion of the Private Improvements Parcel that is not initially developed as part of the Minimum Project unless sale of that portion of the Private Improvements Parcel is included in a sale of all or substantially all of the Developer's interest in the Project.

(f) If the Agency reasonably determines that the proposed sale is not a bona fide fair market value sale and the disapproval notice given pursuant to subsection (a) so states, then the Agency shall not be obligated to purchase the Project or portion thereof pursuant to subsection (a) above and Developer shall not be permitted to sell the Project or portion thereof in the manner proposed.

(g) Developer may submit to the Agency Executive Director and Agency Treasurer a written list of potential transferees together with detailed information on the transferees' qualifications to operate the Project as a First Class Facility. Within thirty (30) days following receipt for the list, the Agency Executive Director shall either approve or disapprove each transferee on the list, which approval shall not be unreasonably withheld if the transferee has the financial capacity and operational experience to operate the Project as a First Class Facility. If a transferee has been approved pursuant to this subsection (g), then Developer may sell the Project to the approved transferee provided the conveyance of the Project occurs within one (1) year following the date of Agency approval of the transferee. Such sale shall not be subject to the procedures set forth in subsections (a) through (f) of this Section 6.04.

6.05 Later Transfers of Parcels for Unbuilt Portions of the Project.

If Developer, pursuant to Section 3.10, elects not to initially develop and construct the entire Project, then Developer shall not engage in a Transfer of any portion of the Private Improvements Parcel that was not initially developed without the prior written approval of the Agency, which approval shall not be unreasonably withheld if the transferee has the financial capacity and experience to develop and operate, as a First Class Facility, the portion of the Project to which the Transfer relates.

Section 7: REPRESENTATIONS, WARRANTIES, AND COVENANTS

7.01 Agency Representations and Warranties.

The representations and warranties of the Agency in this Section 7.01 are a material inducement for Developer to enter into this Agreement. Developer would not purchase the Property from the Agency without such representations and warranties of the Agency. Such representations and warranties shall survive the Closing on each portion of the Property. The Agency represents and warrants to Developer as of the date of this Agreement as follows:

(i) The Agency is a public body, corporate and politic, formed and existing under the Community Redevelopment Law. The Agency has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by the Agency have been duly and validly authorized by all necessary action on the part of the Agency and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of the Agency, enforceable against the Agency in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.

7.02 Developer Representations and Warranties.

The representations and warranties of Developer in this Section 7.02 are a material inducement for the Agency to enter into this Agreement. The Agency would not sell the Property or any portion thereof to Developer without such representations and warranties of Developer. Such representations and warranties shall survive the Closings. Developer represents and warrants to the Agency as of the date of this Agreement as follows:

(a) Developer is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Georgia. Developer is duly qualified to do business and is in good standing in the State of California. Developer has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by Developer have been duly and validly authorized by all necessary action on the part of Developer and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of

creditors generally. The direct and indirect owners of Developer are as set forth in the certificate provided to the Agency at the time of execution of this Agreement.

7.03 Effect of Representations and Warranties.

All representations, warranties and other covenants made by the Agency in this Agreement shall survive the Closing. The Agency shall use its best efforts, in good faith and with diligence, to cause all of the representations and warranties made by the Agency in this Agreement to be true and correct on and as of the Closing. The Agency shall indemnify and defend Developer against and hold Developer harmless from all claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees and disbursements, that may be suffered or incurred by Developer if any representation or warranty made by the Agency in this Agreement was untrue or incorrect in any respect when made or that may be caused by any breach by the Agency of any such representation or warranty.

All representations, warranties and other covenants made by Developer in this Agreement shall survive the Closing. Developer shall use its best efforts, in good faith and with diligence, to cause all of the representations and warranties made by Developer in this Agreement to be true and correct on and as of the Closing. Developer shall indemnify and defend the Agency against and hold the Agency harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, that may be suffered or incurred by the Agency if any representation or warranty made by Developer in this Agreement was untrue or incorrect in any respect when made or that may be caused by any breach of Developer of any such representation or warranty.

7.04 Hazardous Materials Indemnity.

In addition to any other provision of this Agreement, Developer shall indemnify and defend the Agency against and hold the Agency and the City harmless from all claims, demands, liabilities, losses, damages costs and expenses in any way arising from, relating to or connected with any release or threatened release of any Hazardous Materials in, on or under the Private Improvement Parcels, Public Improvement Parcels, or any portion thereof, or any violation of any laws, ordinances, rules, regulations, codes or orders concerning Hazardous Materials at the Private Improvement Parcels or Public Improvement Parcels that exists or occurs, or the onset of which exists or occurs, after the Closing on the relevant portion of the Private Area Parcels or Public Improvements Parcels, except for any claims for costs for which the Agency is responsible pursuant to Section 4.09 above. The foregoing indemnity shall survive the termination of this Agreement.

Section 8: AGENCY CONSIDERATION AND PARKING STRUCTURE FINANCING

8.01 Annual Payments to Developer.

The Agency shall pay to the Developer the Annual Payment beginning with the fiscal year in which, with respect to the Minimum Project as determined pursuant to subsection (b) of

Section 3.01 above, the last of the following have occurred: (i) the City issuing a certificate of occupancy for the Public Improvements, (ii) completion of the shell for the residential portions of the Project, as evidenced by final City building permit and inspection, (iii) the City issuing a certificate of occupancy for at least two hundred (200) of the residential units in the residential portions of the Project, and (iv) completion of the shell for the office and retail portions of the Project, as evidenced by final City building permit inspection and approval. The Annual Payment shall be made each year through the 2024-2025 fiscal year, provided, however, that if the Agency extends the term of the Redevelopment Pan pursuant to Health & Safety Code Section 33333.6(e)(2)(C), then the Annual Payments shall be made through the 2025-2026 fiscal year. The Annual Payment is in consideration for Developer constructing and operating the Public Improvements including constructing approximately 24% of the public parking underground.

The Annual Payment shall be payable initially only from the annual revenue the Agency receives pursuant to Public Parking City Lease (which annual revenue is equal to the Annual Payment) and any other revenue of the Agency, except that the Annual Payment shall not be payable from Tax Increment, except as provided below. At such time as the Agency has repaid to the City all of the debt of the Agency to the City incurred including interest thereon or if the City is no longer obligated to make payments to the Agency under the Public Parking City Lease, the Agency shall pledge the Project Tax Increment to Developer as security for payment of the Annual Payment and the Annual Payment may be paid from Project Tax Increment. The Agency's obligations under this Section 8.01 including the pledge of the Project Tax Increment shall be subordinate to the pledge of Tax Increment that the Agency has made in connection with any bonds or other debt existing as of the date of this Agreement including debt to the City and shall be subordinate to any future pledge of Tax Increment in connection with issuance of new bonds or other debt, provided that the Agency reasonably determines that it will have sufficient Tax Increment to pay any previously incurred debt (other than debt owning to the City), the new debt proposed to be issued and an amount equal to the Annual Payment.

For the purposes of this section 8.01, any bonds or other debt that the Agency issues after the date of this Agreement shall be considered bonds or other debt as of the date of this Agreement if the proceeds of such new bonds or other debt are used entirely to refund or repay previously issued bonds or other debt and do not result in any increase in the principal of outstanding Agency bonds.

The Annual Payment shall be made in installments based upon payments by the City under the Public Parking City Lease. Those installments are to be made as follows: The first installment shall be made on or before February 1 of the year for which the Annual Payment is made. The second installment shall be made on or before June 1 of the year for which the Annual Payment is made. These installments will be based on estimates of the Project Tax Increment for the fiscal year and each installment shall be half of the projected Project Tax Increment for the fiscal year. Within ninety (90) days after the end of the fiscal year, the Agency shall determine the exact amount of the Project Tax Increment for the fiscal year and pay to Developer any balance of the Annual Payment owing. If there was an overpayment to Developer, the overpayment shall be deducted from the first installment of the next year's Annual Payment. Notwithstanding the foregoing, the portion of the first Annual Payment

constituting the Interim Project Tax Increment shall be paid promptly following the date on which, with respect to the Minimum Project as determined pursuant to subsection (b) of Section 3.01 above, the last of the following have occurred: (i) the City issuing a certificate of occupancy for the Public Improvements, (ii) completion of the shell for the residential portions of the Project, as evidenced by final City building permit and inspection, (iii) the City issuing a certificate of occupancy for at least two hundred (200) of the residential units in the residential portions of the Project, and (iv) completion of the shell for the office and retail portions of the Project, as evidenced by final City building permit inspection and approval.

8.02 Calculation of Annual Payment.

(a) Except as set forth in subsection (b) of this section, the Annual Payment shall be an amount equal to the Project Tax Increment for the fiscal year for which the Annual Payment is made, except that the first Annual Payment shall also include an amount equal to the Interim Project Tax Increment for the fiscal years between 2003-2004 and the fiscal year for which an Annual Payment is first required pursuant to Section 8.01. The Project Tax Increment for a particular fiscal year shall mean the Gross Project Tax Increment less the Adjustments. The Gross Project Tax Increment shall mean the Tax Increment the Agency receives in that fiscal year which Tax Increment is generated from the amount by which the sum of the Secured Assessed Value of the Center Property exceeds the 2003-2004 Secured Assessed Value, but in no event shall the Gross Project Tax Increment include any taxes that are generated by development of the Center Property in addition to or in excess of the development to be undertaken as part of the Project. The 2003-2004 Secured Assessed Value is Seventy Seven Million, Nine Hundred Sixty-three Thousand, One Hundred Seventeen Dollars ($77,963.117), increased as set forth in Section 110.1 of the Revenue and Taxation Code between 2003-2004 and the year in which a payment is first required pursuant to Section 8.01. The Interim Project Tax Increment shall be calculated in the same manner as the Project Tax Increment except that there will be no increases as set forth in Section 110.1 of the Revenue and Taxation Code.

The Adjustments for a particular year shall be the amounts the Agency is required by law to pay to other agencies (but excluding any loan payments to the City) or to set aside for particular purposes multiplied by a fraction the numerator of which is the Gross Project Tax Increment and the denominator is the Central Core Tax Increment, provided, however, where an item of Adjustment is not one applied on a pro rata basis to all the Central Core Tax Increment, the Adjustment shall be based on the amount of reduction to the Gross Project Tax Increment that would occur as a result of the Adjustment. The "Central Core Tax Increment" means the total Tax Increment the Agency receives from all the property included in the area governed by the Plan.

No payments shall be made pursuant to this Section 8.02 until the fiscal year in fiscal year in which, with respect to the Minimum Project as determined pursuant to subsection (b) of Section 3.01 above, the last of the following have occurred: (i) the City issuing a certificate of occupancy for the Public Improvements, (ii) completion of the shell for the residential portions of the Project, as evidenced by final City building permit and inspection, (iii) the City issuing a certificate of occupancy for at least two hundred (200) of the residential units in the residential

portions of the Project, and (iv) completion of the shell for the office and retail portions of the Project, as evidenced by final City building permit inspection and approval.

Notwithstanding the provisions of subsection (a), the Annual Payment shall be reduced as follows: The Annual Payment (as calculated pursuant to subsection (a) above) shall be reduced by the fifty percent (50%) of the amount by which the Project Tax Increment for that year exceeds the Target Tax Increment (as defined below), provided that there shall be no reduction in the Annual Payment if the reason for the Annual Payment exceeding the Target Tax Increment for the fiscal year in question is the inclusion in the Annual Payment of the Interim Project Tax Increment. The Target Tax Increment shall be Four Million Dollars Fifty Thousand Dollars ($4,050,000).

As an example of the reduction pursuant to this subsection (b), assume that the Project Tax Increment for the fifth fiscal year is $4,450,000. Since the Project Tax Increment of $4,450,000 in the fifth year exceeds the Target Tax Increment of $4,050,000, there would be a reduction in the Annual Payment. The reduction would be $200,000, 50%, of the difference between the Project Tax Increment and the Target Tax Increment calculated as follows:

$4,450,000 minus $4,050,000 = $400,000
$400,000 multiplied by 50% = $200,000

(b) If the Gross Project Tax Increment and Central Core Tax Increment are increased as a result of future legislation or action of the State of California, then the Project Tax Increment shall not be increased. If the Gross Project Tax Increment and Central Core Tax Increment is reduced as a result of future legislation or action of the State of California, then the Project Tax Increment shall be reduced accordingly, unless the State of California provides revenue to the Agency or City in lieu of and measured by the reduction in Tax Increment resulting in the reduction of Gross Project Tax Increment and Central Core Tax Increment.

8.03 No Representations; Example of Calculations.

The Developer understands and agrees that the Agency is making no representation or warranty as to the amount of the Annual Payment and that the amount of the Annual Payment could be reduced as a result of future events, including but not limited to Developer's actions or inactions with respect to the Private Improvement Parcels, Public Parking Parcels and Public Street Parcels, future legislation that limits a reduces the amount of Tax Increment paid to the Agency or requires that Tax Increment be used for specific purposes, or natural disasters or economic downturns that result in reduction of the value of property in the area governed by the Redevelopment Plan, all of which could affect the amount of the Gross Project Tax Increment and Adjustments used to calculate the Project Tax Increment and the Annual Payment.

The Agency has provided to Developer a September 2003 memorandum from Keyser Marston and Associates ("KMA") describing the methodology for calculating the Project Tax Increment; that memorandum is based on 2002-2003 assessed values, the laws and policies in effect at the time it was prepared and a Developer's preliminary pro forma analysis that is not reflective of the Project as it is currently contemplated. A spreadsheet showing an illustrative

example of calculation of the Project Tax Increment and the Annual Payment is attached to this Agreement as Exhibit T. The KMA memorandum and Exhibit T are intended to be illustrative only and not a representation or warranty from the Agency or KMA as to that methodology or as to the amount of the Project Tax Increment or Annual Payment in the future. Developer acknowledges and agrees that, in entering into this Agreement, it is relying only on its own investigations into the amount of the Project Tax Increment or Annual Payment and is not relying on the KMA letter, Exhibit T or any other representation of the Agency or its employees, officers or representatives.

8.04 Public Parking City Lease.

Upon issuance of a Certificate of Completion and the City or Agency's purchase of the Public Parking Structures pursuant to Section 8.06 below, the Agency and the City shall enter into the Public Parking City Lease whereby the Agency leases the Public Parking Parcels to the City for a term extending to June 30, 2026. The annual rent under the Public Parking City Lease is equal to the Annual Payment. Upon entering into the Public Parking City Lease, the Agency shall promptly assign to the Developer its rights under the Public Parking City Lease.

8.05 Limitation on Offset.

Notwithstanding any other provision of this Agreement, once a Certificate of Completion has been issued there shall be no offset in or termination of the Annual Payment by reason of a default or failure by Developer under this Agreement except as follows: If the Agency concludes that the Developer has failed to operate the Project as a First Class Facility for a continuous period of six (6) months or longer, the Agency may give Developer written notice specifying in detail the failures or conditions giving rise to the notice. If the Developer fails to remedy those failures or conditions within six (6) months following receipt of the notice from the Agency, then the Agency, by written notice to Developer, may cease the Annual Payments. The Agency shall resume payments when the failures or conditions are remedied. If Developer provides to the Agency the name and address of any lender to whom the Annual Payments are pledged or assigned as security, the Agency shall also give that lender the notices provided to Developer pursuant to this section. The Agency shall give any such lender, who so requests in writing, an opportunity to cure failures or conditions specified in the Agency's notice which cure period shall be coterminous with the one provided to Developer under this section plus such additional time is reasonably necessary to allow such lender to gain possession of the Project or portions thereof to allow the lender to cure the failures or conditions. This provision is also included in the Public Parking City Lease.

8.06 Purchase of Structures.

(a) If Developer so requests, then upon completion of the Public Parking Structures substantially in accordance with the approved Construction Plans, the Agency, the City and Developer shall make good faith and diligent efforts to issue and market Mello-Roos Bonds that will provide sufficient proceeds to purchase the Public Parking Structures (other than the Penney's Structure) for the Public Parking Purchase Price. The Developer understands and agrees that the City's standards require that the ratio for the assessed value for the property

against which the Mello-Roos special tax is levied to the amount of the Mello-Roos Bonds must be at least three (3) to one (1) and, as a result, the ability of the City to market bonds that will raise sufficient proceeds to pay the Public Parking Purchase Price is dependent in part on the value of the Private Improvements. The City and Agency will consult with Developer in structuring the Mello-Roos Bond issue. For the purposes of Section 8.06 through 8.09 of this Agreement, the Public Parking Structures shall not include the Penney's Structure. Developer acknowledges that if Mello-Roos Bonds are to be sold, it will be necessary to make changes to the Public Parking Maintenance Agreement and the New REA in order to satisfy requirements of federal tax law applicable to tax-exempt bonds and facilities financed with the proceeds of tax-exempt bonds.

(b) Assuming the City can issue a sufficient amount of Mello-Roos Bonds to pay the Public Parking Purchase Price, then concurrent or promptly following the City's receipt of the bond proceeds, the City shall pay the Public Parking Purchase Price to the Developer and Developer shall convey the Public Parking Structures to the City. The purchase and sale of the Public Parking Structures shall be accomplished pursuant to a purchase agreement reasonably acceptable to Developer and the City and approved by the City's bond counsel for the Mello-Roos Bonds. The Public Parking Construction Lease shall terminate upon the conveyance to the City. The City shall immediately thereafter convey the Public Parking Structures to the Agency, the Agency and City shall enter into the Public Parking City Lease and the City and Developer shall enter into the Public Parking Maintenance Agreement providing for Developer to maintain, operate, repair and replace the Public Parking Structures. Upon the expiration of the Public Parking City Lease, the Agency shall assume the City's rights and obligations under the Public Parking Maintenance Agreement and the Public Parking Maintenance Agreement shall remain in full force and effect with the Developer retaining the obligation for maintaining, operating, repairing and replacing the Public Parking Structures through the remaining term of the Public Parking Maintenance Agreement.

(c) If the City cannot issue an amount of Mello-Roos Bonds sufficient to pay the Public Parking Purchase Price, the parties shall proceed as set forth in subsection (b) above except that the City shall pay only so much of the Public Parking Purchase Price as is available from the Mello-Roos Bonds. If the City pays less than the Public Parking Purchase Price, then, if it becomes feasible in the future for the City to issue and market additional Mello-Roos Bonds to pay the balance of the Public Parking Purchase Price, the City, Agency, and Developer shall make good faith efforts to issue and market those bonds and use the proceeds of the bonds to pay the balance of the Public Parking Purchase Price.

8.07 Public Parking Purchase Price

(a) In the event the Developer does not request that Mello-Roos Bonds be issued, then, upon completion of the Public Parking Structures substantially in accordance with the approved Construction Plans, the Developer shall sell to the Agency and the Agency shall purchase from Developer the Public Parking Structures for a purchase price of One Dollar ($1.00).

(b) In the event the Developer does request that Mello-Roos Bonds be issued, the Public Parking Purchase Price shall be the reasonable costs that the Developer incurred for design and construction of the Public Parking Structures and the financing of the cost of the Public Parking Structures including:

(i) Design, planning, surveying, architectural and engineering fees, costs and expenses, and presentation costs and expenses;

(ii) The cost of labor, equipment, materials and supplies;

(iii) Fees and expenses paid to contractors and subcontractors constructing the Public Parking Structures;

(iv) Legal and accounting costs, fees and expenses;

(v) Interest, commitment fees, points and other financing costs incurred in arm's length transactions;

(vi) The cost of property, liability, workmen's compensation and other insurance, as well as payment and performance bond costs;

(vii) The cost of permits and licenses, and the costs of obtaining the same;

(viii) Utility relocation costs and expenses and fees for connection to utility systems;

(ix) Site preparation costs including the costs of removal of hazardous materials, if any;

(x) Reasonable costs of Developer overhead allocated to the Public Parking Structures construction;

(xi) Any other reasonable hard or soft costs or expenses of the construction of the public Parking Structures reasonably allocated to the Public Parking Structures.

In contracting for the design and construction of the Public Parking Structures, the portion of the costs relating to the Public Parking Structures will be separately and clearly identified to the extent reasonably possible. To the extent that costs relating to the Public Parking Structures cannot be separately charged, such costs shall be allocated between the Public Parking Structures and other improvements on a basis approved by the Agency and City that reasonably allocates costs between the Public Parking Structures and other improvements and satisfies federal tax law so as to assure that the interest on the Mello Roos Bonds will be exempt from federal income tax. The Developer shall submit the proposed method of allocation to the Agency and City for approval prior to commencement of construction.

Within sixty (60) days after completion of the Public Parking Structures, Developer shall deliver to the City and Agency a statement listing the costs for the Public Parking Structure and the basis for allocation of any cost allocated as described in the preceding paragraph. If City disagrees with the accuracy of such statement, the City, within sixty (60) days after delivery thereof, shall advise Developer thereof and Developer shall provide City such additional information as reasonably requested by City to support the accounting or access (with reasonable notice and during regular business hours) to examine Developer's books and records relating to the costs of the Public Parking Structures.

8.08 Optional Purchase of Public Parking.

If, by the date that is six (6) months following the date Developer was required to complete the Project pursuant to Section 5.02 of this Agreement, Developer has not completed the Public Parking Structures or has not constructed the Public Parking Structures substantially in accordance with the approved Construction Plans as determined by the City building official, then the City may, but shall not be required to, purchase the Public Parking Structures provided it is able to issue and market sufficient Mello-Roos Bonds to pay the Public Parking Purchase Price. If the City purchases the Public Parking Structures pursuant to this Section 8.08, then the Public Parking Purchase Price shall be as determined pursuant to Section 8.07 less the amount the City reasonably determines is necessary to complete construction of the Public Parking Structures or the modify or add to the Public Parking Structures so as to cause them to be constructed substantially in accordance with the approved Construction Plans as determined by the City building official.

8.09 Cooperation In Mello-Roos Proceedings.

Developer shall cooperate with the City and Agency in the City proceedings necessary to establish the special tax that will be used to pay the debt service on the Mello-Roos Bonds including consenting to and/or voting in favor of the special tax and other actions.

8.10 Plan Amendments.

The Agency and City shall diligently proceed to amend the Redevelopment Plan to extend the deadline on redevelopment activities and tax increment receipt and to increase the limit on the amount of Tax Increment the Agency can receive to an amount equal or greater than the amount of Tax Increment the Agency anticipates receiving over the life of the Redevelopment Plan. The Developer, however, recognizes and acknowledges the obligation of the Agency and City to comply with all requirements of law applicable to adoption of such amendments to the Redevelopment Plan.

8.11 Consent of City.

The City has consented to this Agreement and, by that consent, the City agrees to the rights and obligations of the City set forth in Sections 8.04, 8.06, 8.07, 8.08 and 8.10 of this Agreement. However, the City shall have no other obligations under this Agreement.

Section 9: PROVISIONS REGARDING REMEDIES

9.01 Scope of Section.

The provisions of this Section 9 shall govern the parties' remedies under this Agreement.

9.02 No Fault of Parties.

The following events shall constitute a basis for a party to terminate this Agreement:

(i) Developer, through no fault of Developer, fails to acquire or no longer has a contractual right to acquire the SLLC Parcel by the date set forth in Section 2.01.

(ii) Developer, through no fault of Developer, fails to purchase the WHL Parcel, Macy's Conveyance Parcel or Harvest Parcel by the date specified in Section 2.01.

(iii) The bankruptcy court overseeing the SLLC bankruptcy disapproves any transaction contemplated by this Agreement for which that court's approval is required.

(iv) Developer is unable to enter into the agreement with the Residential Developer within the time set forth in Section 2.03.

(v) The agreement between the Residential Developer submitted to the Agency pursuant to Section 2.03 does not provide for the Residential Developer to purchase the portion of the Private Improvement Parcel where the residential portion of the Project will be constructed, to assume the obligations of the Developer under this Agreement with respect to the residential portion of the Project, or to develop and construct the residential portion of the Project in accordance with this Agreement.

(vi) Developer is unable to cause to provide a release within the time set forth in Section 2.04.

(vii) Despite good faith efforts, Developer is unable to obtain commitments described in Section 2.05 within the time set forth in that section.

Upon occurrence of any of the above-described events, either party may terminate this Agreement by giving written notice to the other party. Upon termination pursuant to this Section 9.02, neither party shall have any rights or obligations under this Agreement except for indemnities that survive the termination of this Agreement.

9.03 Fault of Agency.

Provided, this Agreement has not been terminated pursuant to Section 9.02 above, the following events shall entitle Developer to take action against the Agency:

(i) The Agency fails to convey the Agency Conveyance Parcels or any portion thereof to Developer when Developer is otherwise entitled to such conveyance under this Agreement.

(ii) The Agency fails to accept conveyance of the Developer Conveyance Parcel or any portion thereof within the time specified in this Agreement.

(iii) The Agency fails to enter into any agreement the Agency is required to enter into at the Closing, as set forth in Section 4.06, when Developer is otherwise entitled to have the Agency enter into that lease.

(iv) The Agency breaches any other material provision under this Agreement.

Upon occurrence of such an event, the Developer may give the Agency notice of default and an opportunity to cure the default. If, within sixty (60) days following receipt of the notice, the Agency fails to cure the default then the Developer may (i) seek any remedy available at law or equity, or (ii) terminate this Agreement provided that no Closing has occurred.

9.04 Fault of Developer.

Provided this Agreement has not been terminated pursuant to Section 9.02 above, the following events shall entitle the Agency to take action against the Developer:

(i) The Developer terminates the contract for purchase of the SLLC Parcel, the contract for purchase of the WHL Parcel the contract for purchase of the Macy's Conveyance Parcel or the contract for purchase of the Harvest Parcel or fails to take the steps necessary to complete those purchases within the time set forth in Section 2.01.

(ii) The Developer fails to assume the obligations under the Penney's Structures Agreement or enter into the Interim Mathilda Agreement within the time set forth in Section 2.02.

(iii) The Developer fails to prepare or obtain approval of the New Parcel Map within the times set forth in Section 3.03.

(iv) The Developer fails to submit Construction Plans to the City within the times specified in Section 3.04.

(v) The Developer fails to apply for building and construction permits within the time specified in Section 3.05 or thereafter fails to obtain such permits.

(vi) The Developer fails to apply for any permits or approvals described in Section 3.06 within the time set forth in that section or thereafter fails to obtain such permits or approvals.

(vii) The Developer fails to submit evidence of financing within the time specified in Section 3.07 or, having submitted evidence thereof, fails to obtain Agency approval of that evidence.

(viii) The Developer fails to submit construction contracts or bonds required by Section 3.08 within the time set forth in that section.

(ix) The Residential Developer fails to enter into the assumption agreement with the Agency contemplated by Section 3.09.

(x) The Developer fails to accept conveyance of any portion of the Agency Conveyance Parcels within the time specified in this Agreement.

(xi) The Developer fails to convey the Developer Conveyance Parcels or any portion thereof within the time specified in this Agreement.

(xii) The Developer fails to enter into any Agreement the Developer is required to enter into at the Closing, as set forth in Section 4.06.

(xiii) The Developer fails to commence construction of the Project within the time specified in Section 5.01.

(xiv) The Developer suspends construction of the Project for a period of more than sixty (60) days.

(xv) The Developer fails to complete construction of the Project within the time specified in Section 5.02.

(xvi) The Developer breaches any other material provision of this Agreement.

Upon the occurrence of such an event, the Agency may give Developer notice of default and an opportunity to cure the default, provided, however, that no notice of default and opportunity to cure need be provided if the default or failure is the one specified in subsection (i) of this section. If, within sixty (60) days following receipt of the notice, the Developer fails to cure the default, or, if the default is not reasonably susceptible to cure within that sixty (60) day period, fails to diligently begins to cure and thereafter diligently prosecutes the cure to completion, then the Agency may (i) seek any remedy available at law or equity, (ii) terminate this Agreement, or (iii) if applicable, obtain the remedies specified in Section 9.05. In the event of a default or failure pursuant to subsection (i) of this section, the Agency may seek any of the foregoing remedies immediately following the default or failure. Notwithstanding the foregoing, Lehman or Inland shall be entitled, as long as Lehman or Inland shall have any interest as lender, investor, equity participant, or otherwise in the Project or any portion thereof and have provided notice in writing to the Agency of such interest, to attempt to cure any of the foregoing events described in (i) through (xvi) (each, "Terminating Event"), upon written election by Lehman or Inland, as the case may be, delivered to Agency within ten (10) days after notice delivered by

Agency to Lehman or Inland of Agency's intention to terminate this Agreement under this Section 9.04, provided, however, that Lehman and Inland shall not have any such entitlement to elect to cure if the default or failure is the one specified in subsection (i) of this section. If Lehman or Inland shall so elect, Lehman or Inland shall attempt diligently and continuously to cure the Terminating Event within sixty (60) days after the later of: (i) delivery of Agency's notice or (ii) Lehman or Inland's initial date of permitted access to the Project or portion thereof necessary to effect cure, provided if by the nature of the Terminating Event 60 days shall be inadequate to effect such cure, Lehman or Inland shall commence such cure within such 60-day period and shall diligently prosecute and complete it within a reasonable time thereafter. This Agreement shall not be terminable during any period during which Lehman or Inland has the right to and has elected to exercise its right to cure hereunder.

9.05 Right to Purchase Private Improvement Parcels.

If, prior to issuance of a Certificate of Completion, there is a default or failure by Developer that is not cured within the time specified in Section 9.04, then in addition to any other remedies available at law or equity, the Agency shall have the right to purchase the portion of the Center Property owned by the Developer at the time of the default or failure. Such option shall be exercised by the Agency giving written notice of purchase to Developer. The purchase price shall be the fair market value of the portion of the Center Property Developer owns, assuming it does not have any rights or advantages under this Agreement, less the amount owing on any liens or encumbrances to which the property purchased is subject. If the Agency and Developer cannot agree on the value, they shall each appoint an experienced independent appraiser to value the property to be purchased using the assumptions set forth in this section. If the higher of the appraisals is no more than one twenty percent (120%) of the lower appraisal, the fair market value shall be the average of the two appraisals. If the higher is more than 120% of the lower, the two appraisers shall jointly select a third appraiser to appraise the property. The fair market value shall be the third appraiser's value but in no event lower than the lower of the first two appraisals or higher than the higher of the first two appraisals.

The Agency's right to purchase pursuant to this Section 9.05 shall not defect or render invalid any security interest permitted by this Agreement.

Section 10: CONTINUING OBLIGATIONS

10.01 Memorandum of Agreement.

At the Closing, the Developer and Agency shall execute and record against the Private Improvements Parcel the Memorandum of Agreement attached to this Agreement as Exhibit K. The Memorandum of Agreement shall be superior to any security interest in the Private Improvements Parcel and Developer shall take such steps as are necessary to insure such priority including arranging for recordation of the Memorandum of Agreement at the time of its acquisition of the SLLC Parcel, WHL Parcel, Macy's Conveyance Parcel, and Harvest Parcel or obtaining subordination agreements from acquisition lenders.

10.02 Purpose of Memorandum.

The Agency and Developer desire to record the Memorandum of Agreement in order to give notice of the continuing obligations under this Agreement including the restrictions or Transfer set forth in Section 6 above, the Agency's right to purchase set forth in Section 9.05, and the covenants set forth in Section 10.03 through 10.07 below.

10.03 Non-Discrimination.

(a) The following shall be included in the grant deed of the Private Improvement Parcels and in any subsequent conveyances of those parcels:

"The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, gender, disability, sexual orientation or ancestry in the sale, lease, sublease, transfer, use occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises so conveyed. The foregoing covenant shall run with the land."

(b) The Developer shall use reasonable efforts to include in any leases for the Project the following:

"The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, gender, disability, sexual orientation or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself, or any person claiming under or through him or her, establish or permit any such practices or discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants , or vendees in the premises herein leased."

The new REA shall obligate Developer's successors to include such provision in leases for the Project.

10.04 Sale or Lease Resulting in Tax Exemption.

Developer shall not sell or lease the Private Improvements Parcel or portion thereof if the ownership or use of the property so sold or leased would cause it to be exempt from property tax, provided, however, such sale or lease shall be permitted if the Developer, by agreement

reasonably acceptable to the Agency, agrees to annually pay to the Agency an amount in lieu of the property taxes that would have been paid absent the tax exemption.

10.05 Downtown Participation.

Developer shall participate in and be supportive of the Sunnyvale downtown business community. In the event a business improvement or property improvement district (the "District") is formed for the downtown, Developer shall not oppose or protest such formation. If the Developer's affirmative vote or consent to the creation of such District is required, Developer shall provide that affirmative vote or consent. The Agency understands that Developer will be providing certain routine maintenance and security functions for the Project at Developer's sole cost and therefore should not be required to pay a portion of the District's costs of providing such routine functions to portions of the downtown area other than the Project. In addition, to the extent the Developer provides maintenance or security functions to portions of the downtown area in addition to the Project, the Developer shall receive a credit for the costs it incurs for all such functions that are provided for the District. Developer shall also work with the downtown business community in producing special events, programs and advertising to promote the entire downtown area. Developer shall maintain signage at pedestrian exists from the Center Property to Washington Street showing the direction to Historic Murphy Avenue.

10.06 City Use of Plazas.

Developer shall permit City or Agency to use the outdoor plaza that is part of improvements on the Private Improvements Parcel for special City or Agency sponsored events. The City or Agency shall be entitled to such use on at least fifteen (15) days each calendar year. Notice of planned use by the Agency or City shall be given to the Developer, Macy's and Target at least sixty (60) days prior to the event or such shorter period on which the parties may agree. If Developer, Macy's or Target objects to the Agency or City proposed use and the Agency and City desires to go forward with the proposed use, Developer, Macy's or Target may request that the City Council of the City review the proposed date and use. Such request for City Council review shall be in writing delivered to the City Clerk within twenty (20) days after receipt of notice of a planned use. The review by the City Council shall be scheduled for public hearing and action at the soonest available City Council meeting. The decision of the City Council as to the date and planned use shall be final. The Developer shall coordinate with the Agency and City to minimize to the fullest extent possible conflict between City or Agency sponsored events and other events. Events at the plaza shall be planned to minimize interference with pedestrian circulation through the plaza and to stores facing the plaza. The Agency or City shall reimburse the Developer for the reasonable costs of all services associated with City or Agency use of the plaza (including but not limited to security and common area clean-up) to the extent that the City or Agency do not provide such services.

10.07 Policing of Project.

Developer shall provide adequate security and traffic safety for both the Public Improvements Parcels and the Private Improvements Parcel as is necessary to minimize the need of the City to provide routine security and traffic safety patrol for the Project and that is

consistent with the New REA. The parties do expect that the City's public safety department would respond to emergencies, crimes in progress and other similar events that are beyond the scope of a routine patrol. In providing for security, Developer shall comply with standards that are reasonably promulgated by the City's Public Safety Department. The provisions of this Section 10.07 shall also be contained in the Public Streets Maintenance Agreement and the Public Parking Maintenance Agreement. Nothing in this Section 10.07 is intended to prevent the City from engaging in any police or security activities it deems necessary to protect the health, safety and welfare of the City or any person.

Section 11: SECURITY FINANCING INTERESTS

11.01 Security Financing Interest.

The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development. Mortgages, deeds of trust, and other reasonable methods of security are collectively referred to herein as a "Security Financing Interest."

11.02 Holder Not Obligated to Construct.

The holder of any Security Financing Interest is not obligated to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in conveyances of property from the Agency to Developer be construed so to obligate such holder. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Private Improvement Parcels or Public Improvement Parcels or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

11.03 Notice of Default and Right to Cure.

Whenever the Agency delivers any notice of default to the Developer under this Agreement, the Agency shall at the same time deliver to each holder of record of any Security Financing Interest a copy of such notice. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default.

Section 12: GENERAL PROVISIONS

12.01 Notices.

All notices, demands, and communication between the Agency and the Developer shall be in writing and shall be sufficiently given if and shall be deemed given unless dispatched by registered or certified mail, postage pre-paid, return receipt requested, delivered personally, or

sent by reputable overnight service or sent by facsimile transmission with a copy mailed by first class United States mail to the principal office of the Agency and the Developer as follows:

Agency:	Sunnyvale Redevelopment Agency 456 W. Olive Avenue Sunnyvale, California 94088 Attn: Executive Director Telephone: 408-730-7480 Facsimile: 408-730-7699
Developer:	Fourth Quarter Properties XLVIII LLC 1300 Parkwood Circle, Suite 430 Atlanta, Georgia 30339 Attn: Bill Brown Telephone: (770) 801-9886 Facsimile: (770) 801-8898

Any notice, demand or other communication under this Agreement may be given on behalf of a party by the attorney for such party.

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time designate by notice as provided in this Section 12.01.

12.02 Conflict of Interests.

No member, official or employee of the Agency shall make any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, association or other entity in which he or she is directly or indirectly interested, except as may be required by law.

12.03 Non-Liability of Agency Officials, Employees and Agents.

No member, official, employee or agent of the Agency or City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or for any amount, which may become due to the Developer or successor or on any obligation under the terms of this Agreement. No employee, official, or agent of the Developer shall be liable to the Agency in the event of any default or breach or for any amount which may become due to the Agency.

12.04 Delay.

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation (including litigation challenging this Agreement)

unusually severe weather or soils conditions which will necessitate delays; inability to secure necessary labor, materials or tools; delays of any contractor, sub-contractor or supplier; acts of the other party; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the Agency or the City); or any other causes (other than lack of funds of Developer or Developer's inability to finance any obligation under this Agreement) beyond the control or without the fault of the party claiming an extension of time to perform. The party claiming such extension shall send written notice of the extension to the other within thirty (30) days from the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the Agency and the Developer.

12.05 Hold Harmless.

If any person shall assert any claim against the Agency or the City or their respective officers, employees, agents or contractors on account of injury to person or property alleged to have been caused by reason of the acts of Developer, its agents, employees, representatives, contractors or subcontractors, or with respect to Developer's construction on the Public Improvements Parcels or the Private Improvements Parcels or the use thereof, or inspection or investigation thereof, the Agency shall notify the Developer who shall defend at the Developer's own expense any suit based upon such claim; and if any judgment or claim against the Agency or City or their respective officers, employees, agents or contractors shall be allowed, the Developer shall pay or satisfy such judgment or claim and pay all reasonable costs and expenses in connection therewith. The foregoing indemnity shall survive termination of this Agreement. The foregoing indemnity shall not apply to: (i) any claim for injury to person or property arising from the gross negligence or willful misconduct of the Agency or City or their respective officers, employees, agents or contractors; (ii) to any claim that arises solely by reason of the actions or omissions of an Unrelated Third Party or in connection with the Public Area Parcels or the Parking Parcels; or (iii) any claim that arises solely by reason of the design of the improvements on the Public Improvement Parcels to the extent that the design has been approved by the City and the design element is one normally approved by the City for public facilities. An Unrelated Third Party is a person or entity who is not directly or indirectly an employee, officer, agent, representative, tenant, contractor or subcontractor of the Developer.

12.06 Displaced Tenant Preference.

In accordance with Health & Safety Code Section 33339.5, the Agency may refer to Developer business tenants who have been displaced by Agency activities. If there is space available in the Project for such tenants, the tenant's use is consistent with the other uses in the Project, the New REA and in this Agreement, and the tenant is willing to lease space in the Project at market rents and on terms equivalent to the terms for other tenants in the Project, then Developer shall give preference to such tenant in leasing over similarly situated prospective tenants who were not displaced by Agency activities.

12.07 Insurance.

During the construction of the Project, Developer or its contractor shall maintain general liability insurance with limits of not less than $5,000,000 each occurrence and $10,000,000

combined single limit bodily injury and property damage. Such insurance shall name the Agency and the City as additional insureds, as respects the operations of the Developer. During the course of construction of the Public Improvements, Developer shall maintain comprehensive all risk insurance in the amount of the cost of construction of the Public Improvements which insurance shall name the Agency and City as additional insureds.

12.08 Approvals and Consents.

All consents, approvals, notices or other communications between the parties required under this Agreement shall be given in writing with such consents or approvals not to be unreasonably withheld, delayed or conditioned unless specified otherwise in this Agreement. Any consents, approvals or actions of the Agency may be given by the Executive Director of the Agency or the governing board of the Agency as determined by the Agency. The Agency or Executive Director on behalf of the Agency may extend times for Developer performance or satisfaction of conditions under this Agreement.

12.09 Rights and Remedies Cumulative.

The rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

12.10 Real Estate Commissions.

Each party represents and warrants to the other party that it has not dealt with any investment advisor, real estate broker or finder, or incurred any liability for any commission or fee to any investment advisor, real estate broker or finder, in connection with the conveyances under this Agreement, and each party hereby agrees to indemnify, defend and hold harmless the other party from and against any and all claims, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys' fees) arising out of or incurred in connection a party's breach of its representation and warranty under this Section 12.10.

12.11 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California.

12.12 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

12.13 Legal Actions.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

12.14 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto except that there shall be no transfer of any interest in this Agreement by any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

12.15 Parties Not-Venturers.

Nothing in this Agreement is intended to or does establish the Agency and Developer as partners, co-venturers, or principal and agent with one another.

12.16 Time of the Essence.

In all matters under this Agreement, the parties agree that time is of the essence.

12.17 Complete Understanding of the Parties.

This Agreement consists of the text of the Agreement and the attached Exhibits and constitutes the entire understanding and agreement of the parties with respect to the subject matters of this Agreement. This Agreement supersedes all prior agreements, understandings, offers and negotiations, oral or written, with respect to the subject matters of this Agreement.

12.18 Construction.

The Agency and Developer acknowledge that each party and its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection with the transaction contemplated by this Agreement. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement. The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

12.19 Waivers.

No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiver party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

12.20 Amendments.

This Agreement may not be amended or modified except by a written instrument signed by the Agency and Developer.

12.21 Counterparts.

This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

WHEREFORE, the parties have executed this Agreement on the date first noted above.

ATTEST:

_____
Agency Secretary

APPROVED AS TO FORM:

_____
Agency Counsel

SUNNYVALE REDEVELOPMENT AGENCY, a public body, corporate and politic

By: _____

Name: _____

Title: _____

FOURTH QUARTER PROPERTIES XLVIII LLC, a Georgia limited liability company

By: Its Managing Member

Name: _____

Title: _____

CONSENT OF THE CITY OF SUNNYVALE

The City of Sunnyvale hereby consents to and agrees to be bound by the provisions of Sections 8.04, 8.06, 8.07, 8.08 and 8.10 of this Agreement to the extent those sections impose obligations on the City. The City shall have no other obligations under this Agreement

CITY OF SUNNYVALE

By: _____

Name: _____

Title: _____

Exhibit A
Map Showing Center Property

Exhibit B
Current Subdivision Map

Exhibit C
Developer Project Proposal

Exhibit D
Map Showing Public Improvements
and Private Improvements

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Exhibit F
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Exhibit H
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Exhibit I
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Exhibit K
Memorandum of Agreement

Exhibit L
Title Exceptions for Conveyances to Developer

Exhibit M
Title Exceptions for Conveyances to Agency

Exhibit N
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Phase 1 Environmental Site Assessment

Sunnyvale Town Center Mall

Sunnyvale, California

Prepared for City of Sunnyvale
Public Works Department

By Levine Fricke

Exhibit O
Legal Description of WHL Parcel

Exhibit P
Public Parking City Lease

Exhibit Q
Public Parking Maintenance Agreement

Exhibit R
Interim Mathilda Agreement

Exhibit S
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Exhibit T
Spreadsheet Showing Tax Increment Calculation

DRAFT

DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT

by and between

THE SUNNYVALE REDEVELOPMENT AGENCY

and

FOURTH QUARTER PROPERTIES XLVIII, LLC

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